CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 231

HIDEMITSU TOYOTA

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

FILED DECEMBER 1, [illegible]

([illegible])

(29,988)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 24, 1925

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1923.

No. 1653.

HIDEMITSU TOYOTA,
DEFENDANT, APPELLANT,

v.

UNITED STATES OF AMERICA,
PETITIONER, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BEFORE BINGHAM, JOHNSON AND ANDERSON, JJ.

QUESTION OF LAW CERTIFIED BY THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT TO THE SUPREME COURT OF THE UNITED STATES.

NOVEMBER 10, 1923.

This is a petition under Section 15 of the Act of June 29, 1906, to cancel the certificate of naturalization issued to one Hidemitzu Toyota. The agreed facts are as follows:

"It is agreed that Hidemitsu Toyota is a person of the Japanese race, born in Japan; that he entered the United States in the year 1913; that he has served substantially continually in the United States Coast Guard Service (formerly called the United States Revenue Cutter Service) from November, 1913, to date, May, 1923; that during nearly all the period when the United States was engaged in the recent Great War the said service was a part of the naval forces of the United States; that he has eight or more honorable discharges issued to him for such service, some of them

being for service during the said war; that he filed his petition for naturalization, said petition being No. 58,600, in the District Court of the United States for the District of Massachusetts, at Boston, on May 14, 1921, relying on the Act of May 9, 1918 (c. 69, 40 Stat. 543, Comp. Stat. 1918, Sec. 4352 (7)–(13), and Sec. 4352aa), and on the Act of July 19, 1919 (c. 24, Sec. 1, 41 Stat. 222, Com. Stat. 1923, Supp. Sec. 4352aaa); that the said District Court granted his said petition on May 16, 1921, by virtue of the said acts; that on the same day a certificate of naturalization, No. 1,591,923, was issued to him.

"It is further agreed that if a person of the Japanese race born in Japan may legally be naturalized under subdivision 7, Section 4 of the Act of June 29, 1906, as amended by the Act of May 9, 1918, or the Act of July 19, 1919, the defendant in this case is legally naturalized."

In the District Court it was held that Toyota was not entitled to be naturalized under subdivision 7, Section 4 of the Act of June 29, 1906, as amended by the Act of May 9, 1918, or under the Act of July 19, 1919, and entered an order canceling his certificate of citizenship, from which order or decree this appeal was taken.

We desire the instruction of the Supreme Court upon the following questions:

(1) Whether a person of the Japanese race, born in Japan, may legally be naturalized under subdivision 7, Section 4 of the Act of June 29, 1906, as amended by the Act of May 9, 1918.

(2) Whether such subject may legally be naturalized under the Act of July 19, 1919 (c. 24, Sec. 1, 41 Stat. 222; Comp. Stat. 1923, Supp. Sec. 4352aaa).

It is now, to wit, November 10, 1923, ordered, that the foregoing statement of facts, and questions of law arising thereon, be certified under the seal of this court, and transmitted to the Supreme Court.

By the Court,

ARTHUR I. CHARRON, *Clerk.*

In United States Circuit Court of Appeals

Clerk's Certificate

And now, here, the Judges of the United States Circuit Court of Appeals for the First Circuit, certify that the foregoing is a true copy of an Order of Court entered on November 10, 1923, in said cause numbered and entitled, No. 1653, Hidemitsu Toyota, Defendant, Appellant, v. United States of America, Petitioner, Appellee, and that pursuant to said order, the statement of facts and questions of law arising thereon, together with the fact that said Circuit Court of Appeals desires the instruction of the Supreme Court of the United States for the proper decision of said questions of law, contained in said order, are hereby certified under the seal of said United States Circuit Court of Appeals for transmission to said Supreme Court.

In testimony whereof I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit at Boston, in the First Judicial Circuit, this thirteenth day of November, A. D. 1923.

Arthur I. Charron, Clerk. (Seal of the United States Circuit Court of Appeals First Circuit.)

Endorsed on cover: File No. 29,988. U. S. Circuit Court of Appeals, First Circuit. Term No. 231. Hidemitsu Toyota vs. The United States of America. (Certificate.) Filed December 3, 1923. File No. 29,988.

In the Supreme Court of the United States

OCTOBER TERM, 1924

HIDEMITSU TOYOTA
v.
UNITED STATES
No. 231

JOINT REQUEST TO REINSTATE FOR HEARING

In accordance with Section 9, Rule 26, counsel for the parties in the above-entitled case request the Court to restore it to the calendar for hearing and suggest that it be placed at the foot of the call for Monday, March 16, 1925, or as soon thereafter as practicable.

On motion made by the Solicitor General of the United States on behalf of counsel for Hidemitsu Toyota, this case was continued on January 22, 1925, when reached for argument, because the record was not then in print. Toyota is a person in poor circumstances, and it has been necessary for his counsel to provide for the printing of the record in this Court out of his own resources. The record is now, however, in the course of printing, and it is expected that it will be in the hands of counsel within the next few days.

34056—25

For the reasons stated in the appended affidavits the case should, in the opinion of counsel, be restored to the calendar for hearing.

JAS. M. BECK,
Solicitor General.

LAURENCE M. LOMBARD,
Counsel for Toyota.

FEBRUARY 25, 1925.

AFFIDAVIT IN SUPPORT OF JOINT REQUEST OF COUNSEL TO REINSTATE FOR HEARING

SUFFOLK,

Commonwealth of Massachusetts, ss:

I, Laurence M. Lombard, on oath do say that I am counsel for the appellant in the above-entitled cause; that the said cause was continued on January 22, 1925, when it was reached for hearing because the record was not then in print, as the case was appealed from the United States District Court for the District of Massachusetts *in forma pauperis* and was certified to this court by the Circuit Court of Appeals for the First Circuit, and there were no funds available for such printing; that affiant understands that the record is now in the course of printing; that the case should be reinstated for hearing at the present term because of the importance of the questions involved and because it is expected that counsel for both parties will be ready to proceed with the argument of the case on the date suggested for reinstatement.

LAURENCE M. LOMBARD.

Subscribed and sworn to, before me, this 17th day of February, 1925.

[SEAL.] GEORGE S. FULLER,
Notary Public.

AFFIDAVIT IN SUPPORT OF JOINT REQUEST OF COUNSEL TO REINSTATE FOR HEARING

CITY OF WASHINGTON,
District of Columbia, ss:

James M. Beck, Solicitor General of the United States, being duly sworn, deposes and says that the above case was continued by the Court when reached for argument on January 22, 1925, because the record was not then in print; that affiant understands that the record is now in course of printing; that it is expected that the record will be in print and that counsel for both parties will be fully prepared to proceed with the argument of the case on the date suggested for reinstatement in the joint request of counsel herewith; that this case is here upon a certificate from the Circuit Court of Appeals for the First Circuit, and it is believed that the desirability of having the questions certified answered without undue delay warrants the reinstatement of the case for hearing at the present term.

JAMES M. BECK.

Subscribed and sworn to before me this 13th day of February, 1925.

[SEAL.]

W. MARVIN SMITH,
Notary Public, D. C.

(July 12, 1919).

IN THE UNITED STATES DISTRICT COURT

FOR THE TERRITORY OF HAWAII.

IN THE MATTER OF THE APPLICATION OF :

TATSUSHI SAITO :

AND OTHERS OF THE JAPANESE RACE :

FOR NATURALIZATION :

J.B. Lightfoot, Attorney for Petitioners :

William Ragsdale, Agent for, and

S. C.Huber, United States Attorney, representing the Bureau of Naturalization.

HORACE W. VAUGHAN, JUDGE.

OPINION

The applicants seek naturalization under the provision of the seventh subdivision of the Act of May 9, 1918. They are of the Japanese race, and are not "white persons" within the meaning of these words as they are used in section 2169 of the Revised Statutes, as determined by the Courts; nor are they of African

nativity or descent. But they are serving in the Army of the United States, and they come within the language of the provisions of the seventh subdivision of the act of May 9, 1918; and they are entitled to naturalization thereunder unless the said provisions of said subdivision are limited by, and the word "alien", wherever it occurs therein as well as in other places in the act, should be construed as meaning an alien who is a white person or of African nativity or descent within the meaning of section 2169 of the Revised Statutes. The question is, therefore, whether the provisions of said subdivision are so limited, and the word "alien" therein should be so construed.

But for the repealing clause of the act there would be no question about it. If the language of the repealing clause were stricken from the act, every time the word "alien" occurred, section 2169 of the Revised Statutes would limit it to aliens who are free white persons or of African nativity or descent. In re Kumagai, 163 F. 922; In re Knight, 171 F. 299;

In re Bessho, 178 F. 245; and many others. Every act authorizing the naturalization of aliens has been so construed by the Courts, and had been at the time the act of May 9, 1918, was passed. And Congress must be presumed to have known this. Case of Sewing Machine Companies, 18 Wall, 584, But the language of the repealing clause is in the act, and reads as follows:

"All acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed; but nothing in this act shall repeal or in any way enlarge section twenty-one hundred and sixty-nine of the Revised Statutes, except as specified in the seventh sub-division of this act and under the limitation therein defined."

What does this language mean? Evidently it means that section 2169 is not "repealed or enlarged" but remains in force and limits all the provisions of the act "except as specified in the seventh sub-division". But what does the language, "except as specified in the seventh subdivision", mean? What specifidation or specifications of the seventh subdivision are referred to? The seventh subdivision does not mention section 2169, nor

make any specification relative to it; but it contains many specifications relative to the naturalization of several classes of persons, some aliens and some not, all of whom are engaged or have been engaged in some kind of public service in this country. It is evident that as to some one or all these specifications, section 2169 is "repealed or enlarged" so as to take it or them from under the limitation of section 2169, by which it or they would be limited if the language of the repealing clause were not in the act. What specifications of the seventh subdivision are referred to? Let us examine. Some of the provisions of the seventh subdivision were taken from prior acts, some minor changes in the language being introducted; and some of the provisions were new, enacted for the first time. This may be seen from an examination and comparison of section 2174 of the Revised Statutes, providing for the naturalization of alien seamen serving on merchant vessels and Section 2166 of the Revised Statutes providing for the naturalization of honorably discharged soldiers, and exempting them from certain formalities prescribed as to others, and the act of July 26, 1894, providing for the naturalization of aliens honorably

discharged from service in the Navy or Marine Corps, and the act of June 20, 1914, relating to the same subject. The provisions of the seventh subdivision relative to the same matters were enacted in lieu of those laws, which were repealed. This accounts in some measure for the involved and complicated language used in the subdivision and the length of it, and the different specifications as to the different groups or classes which should be noticed:

(1) "Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or Naval Auxiliary service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for re-enlistment." This was new legislation to enable Filipinos in the Naval Service to be naturalized without proof of residence.

(2) "Any alien, or any Porto Rican not a

citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States, etc., or in the United States Navy, etc., or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a re-enlistment or re-appointment, or within six months after an honorable discharge or separation therefrom", etc. This was old legislation with new features and additions and changes to meet conditions.

(3) "Any alien serving in the Military or Naval Service of the United States during the time this country is engaged in the present war". This was new legislation required by conditions caused by the war.

(4) "Any alien declarant who has served in the United States or Navy, or the Philippine Constabulary, and has been honorably discharged therefrom, and has been accepted for service

in either the Military or Naval Service of the United States on condition that he become a citizen of the United States". This was an extension and adaptation of old legislation to conditions.

As to the first and second groups, it is provided that any one or either of them "may, on presentation of the required declaration of intention, petition for naturalization without proof of the required five years' residence within the United States if upon examination by the representative of the Bureau of Naturalization, in accordance with the requirements of this subdivision, it is shown that such residence cannot be established." Any one in the third group "may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence in United States". There are other provisions in regard to the fourth group; and there are other provisions that apply to all the groups, to any person "embraced within this subdivision"; but

none of these have any bearing on the question except as they show that every provision of the seventh subdivision has in view the speedy naturalization of those engaged in any public service of the United States having relation to the conduct of the war, whose loyalty to the United States is proven by such service. And there is nothing about section 2169 of the Revised Statutes anywhere in any of the language of the subdivision. What specifications of the seventh subdivision are referred to in the repealing clause, as to which section 2169 is repealed or "enlarged" so as to permit them to prevail over the limitation contained in its language? Evidently, some specification or specifications which, in the opinion of Congress, would be limited by section 2169 if some language were not used to save them from it. Then what specification or specifications of the seventh subdivision would be limited by section 2169 if the language of the repealing clause were not in the act? All of them except those which make specific provision for these native-born Filipinos and Porto Ricans. These,

being specific and designating Filipinos and Porto Ricans by name, and neither Filipinos nor Porto Ricans being aliens, needed nothing to save them from the limitation of Section 2169, but all those relating to aliens did.

It is urged by the Bureau of Naturalization that the language of the repealing clause, "except as specified in the seventh subdivision" refers to that part of the seventh subdivision and to that part only relating to "any native born Filipino". This view was urged in the Feronda case.

In January 1919, Leon Feronda, a native-born Filipino, residing in the Territory of Hawaii, serving at the time in the military forces of the United States, petitioned for naturalization under this seventh subdivision of the act of May 9, 1918. The Bureau of Naturalization opposed his petition upon the ground that the said seventh subdivision does not authorize the naturalization of any Filipinos except those named therein, to wit, "any native born Filipino of the age of twenty years and upwards who has declared his intention to become

a citizen of the United States and who has enlisted or may hereafter enlist in the United States navy or Marine Corps or Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for re-enlistment"; and that, as the petition of Feronda did not bring him within the language quoted, he could not be naturalized because, being neither a white person nor of African nativity or descent, he was excluded by section 2169 of the Revised Statutes. This Court, following the opinion of Circuit Judge Morrow in the Bautista case, 245 Fed. 765, held that section 30 of the act of June 29, 1906, includes within its language native-born Filipinos and is not limited by section 2169 of the Revised Statutes in its provision for their naturalization. Discussing the question, this Court said:

"The purpose of Congress in making provision for the naturalization of those Filipinos specified in the seventh subdivision may be seen when it is remembered that the Filipino, if included within the language of section 30 of the

act of June 29, 1906, must prove residence in a state or an organized territory of the United States in order to get naturalized under said Section 30. The Filipino designated in the seventh subdivision can not prove such residence. He could not be naturalized under section 30 without proving such residence. The language of the seventh subdivision was necessary in order to let him be naturalized without such proof.

"Section 30 of the act of June 29, 1906, authorized the naturalization of 'all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any state or organized territory of the United States', and provides for the naturalization of such persons by making "all the applicable provisions of the naturalization laws apply to and authorize the admission to citizenship of all 'such persons, with the modification therein stated, which has no bearing on the question under discussion. Section 2169 of the Revised Statutes is a provision of the Naturalization laws. It could be applied in all cases in which naturalization is sought under section 30. If

applied in cases in which native born Filipinos are petitioners it will exclude them. At the time I decided the Ocampo case, none of the opinions holding that it should not be applied, had given any better reason for so holding than that the Filipino is not an alien, and that section 2169 applies only to aliens. The fallacy of this reason is seen when it is remembered that section 30 provides for the naturalization of those coming within its terms by making all the applicable provisions of the laws providing for the naturalization of aliens apply to and authorize the naturalization of such persons. No sound reason why section 2169 should not be applied appearing to me, following the Alverto case, 198 Fed. 688, I held it to be applicable and that it limited the naturalization authorized by section 30 to 'free white persons and persons of African descent or nativity'. Since that time the question has been before Circuit Judge Morrow, and in an able opinion, In re Bautista, 245 Fed. 765, he has reviewed the history of the enactment of section 30, and his opinion has convinced me

that it was the intention of Congress to include the Filipinos among those for whose benefit section 30 was enacted, and that the language of said section includes them, and that to apply section 2169 would defeat the very purpose, at least one of the purposes of the enactment of section 30.

"The fact that the seventh subdivision makes provisions for the naturalization of those Filipinos specified therein shows no purpose on the part of Congress to limit the naturalization of Filipinos to those specified, but a recognition by Congress that section 30 of the act of June 29, 1906, does not, on account of its requirement as to residence, provide for those specified. I can see no reason why Congress should limit the naturalization of Filipinos, if they are to be admitted to citizenship, to those who have served in the Navy or Marine Corps or Naval Auxiliary Service. Yet that is the substance of the contention by the United States Attorney on behalf of the Bureau of Naturalization - that the purpose of Congress in making the provision for the Filipinos speci-

fied in the seventh subdivision and using the peculiar language of the repealing clause of the act of May 9, 1918, was to limit the naturalization of Filipinos to those specified in said seventh subdivision and to forbid the naturalization of all others. The action of Congress supports the correctness of the opinion of Judge Morrow, for it shows that Congress must have been of the opinion that the language of section 30 of the act of June 29, 1906, includes Filipinos and is not limited by section 2169. Surely Congress did not intend to permit the naturalization of Filipinos serving in the Navy without proof of residence and to prohibit the naturalization of Filipinos residing in the United States and serving in the Army. And the only way it is possible to avoid the imputation of such an intention to Congress is to say that Congress realized that all provisions for the naturalization of aliens could be applied by virtue of section 30 of the act of June 29, 1906, for the benefit of all Filipinos who could prove residence."

If Congress knew, as it must be presumed to have known, that section 2169 does not forbid the naturalization of Filipinos under section 30 of the act of June 29, 1906, though they were not named therein, surely it must have known that section 2169 would not interfere with the naturalization of Filipinos or Porto Ricans under the specific provisions of the seventh subdivision of the act of May 9, 1918, naming them, even if the language "except as specified in the seventh subdivision" were not used. The only specification of the seventh subdivision that does not relate to aliens other than that which relates to Filipinos, is that relating to Porto Ricans. The word Porto Ricans is not ethnic but geographic, does not designate persons of one race, but those of any race who are natives of the island of Porto Rico, not only the descendants of the aborigines who were living on the island at the time it was discovered by Columbus, but all natives of the island and includes persons of other races as well as those of the Caucasian

and African, though the population of the island was, according to the census of 1910, about two-thirds white and one-third negro. No Porto Rican of the white race or of the negro race or of "African descent" is denied naturalization by section 2169. That section permits the naturalization of aliens of those two races; and nearly all Porto Ricans are of one or the other or of both. Congress must, therefore, have known that there was no need for repealing or enlarging section 2169, to permit the naturalization of Porto Ricans of either or of both these races. There could not possibly have been any need for repealing or enlarging section 2169 to permit the naturalization of any Porto Rican except those few of them who are of some other race than those permitted by section 2169. And if Congress was willing to repeal or enlarge section 2169 to permit the naturalization of Porto Ricans of other races than the white and the black, was it unwilling to permit the naturalization of any others of other races than the white and black besides Porto Ricans? What

reason was there for lifting the ban of section 2169 in favor of the Chinese and Japanese living in Porto Rico and keeping it on against the Chinese and Japanese living in the United States? Surely Congress did not use the language of the repealing clause in order to permit the naturalization of the negligible number of Porto Ricans of a race excluded by Section 2169.

Some courts have construed the language of the repealing clause, "except as specified in the seventh subdivision", to refer to the provisions relating to Filipinos and Porto Ricans, and have referred to those provisions as the "exceptions specified." Let it be noted that the repealing clause does not say "exceptions specified", but does say "except as specified in the seventh subdivision". The provisions relating to Filipinos and Porto Ricans are not exceptions to section 2169. Neither of them is an exception to it. That relating to the Filipino is a specific designation of those persons of the designated race who possess certain qualifications, and an authorization of their

naturalization in a prescribed manner, That relating to Porto Ricans is a specific designation of those persons who are natives of the designated Island who possess certain qualifications and an authorization of their naturalization in the manner prescribed. Now, would that relating to the Filipino or that relating to the Porto Rican be limited by section 2169 if the act had not contained the language "except as specified in the seventh subdivision"? Would section 2169 have limited the class of persons designated, either Filipinos or Porto Ricans, if "except as specified", etc., had been left out of the repealing clause? Certainly not. Such a construction would have annulled the provision relating to the Filipino, the very language of which takes it out of the operation of section 2169 without the aid of language of the repealing clause. The use of the specific language as to each, designating one by the name of his race and the other by the name by which he is called on account

of his nativity takes the provisions out of each out of the operation of the general language of section 2169 without the aid of the language "except as specified in the seventh subdivision". Of course, it has been held, and properly so, that section limits all provisions of all laws for the naturalization of aliens, unless Congress provides otherwise. But it does not limit re-specific provisions for the naturalization of those who are not aliens. Therefore, it was not necessary for the act of May 9, 1918, to contain the proviso that "nothing in this act shall repeal or enlarge section 2169 of the Revised Statutes", in order to save that section from repeal or to limit all the general provisions of the act by section 2169. All such provisions would have been limited by section 2169 if the act had said nothing about it. Nor to was it necessary for the act to contain the language "except as specified in the seventh subdivision of this act and under the limitation therein defined" in order to save the provisions made for the naturalization of the Filipinos and Porto Ricans from the operation of section

2169. In other words, if this last quoted language had been stricken from the bill and the proviso had been left unnecessarily guarding section 2169 from repeal, the specific provision for the naturalization of those Filipinos and Porto Ricans specified in the seventh subdivision would have been unaffected by section 2169. And if the proviso saving section 2169 from repeal had been stricken from the bill, every time the word alien occurred in the act, it would have meant and would have been construed by the courts, following all the decisions on the question, to mean aliens such as are designated in section 2169. Congress must be presumed to have known this, and to have inserted the proviso and the exception for some purpose; and the language "except as specified in the seventh subdivision", etc. must be construed to refer to something specified in the seventh subdivision which would be limited by section 2169 if such language were not in the act. It can not, therefore, be construed to refer to the provision made for the naturalization of Filipinos

or Porto Ricans. I repeat that there is no exception specified in the seventh subdivision. But, "as specified in the seventh subdivision", "aliens serving in the Military or Naval Service of the United States during the time this country is engaged in the present war" and aliens engaged in certain specified service of the United States for the length of time specified, were given the right to naturalization; and these specifications as to aliens, as Congress must be presumed to have known, would have been subject to the limitation of section 2169 unless saved from such limitation by the use of some language to accomplish their salvation. And they are the only things "specified in the seventh subdivision" that needed such salvation. If Congress wished to save these specifications of the seventh subdivision from the limitation of section 2169 and leave all other portions of the act of May 9, 1918, under such limitation, it used very appropriate language to do so, and must be presumed to have intended to do so.

It is a general rule, without exception,

in construing statutes, that effect must be given to all their provisions, if such a construction is consistent with the general purpose of the act, and the provisions are not necessarily conflicting; and all acts of the legislature should be so construed, if practicable, that one section will not defeat or destroy another, but explain and support it. "We are not at liberty", said Mr. Justice Strong, "to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant"; this rule has been repeated innumerable times". 1 Fed. Stat. Ann. (2d Ed.), p. 46.

The construction contended for by the Bureau is that which should be given if the language of the repealing clause and the pro-

viso and the exception were stricken from the act. It is to be presumed that all the language of the repealing clause, the proviso and the exception was used purposely and that the act means something on account thereof it would not mean if either the repealing clause or the proviso or the exception were out of it.

What, then, was the purpose of Congress in using the language of the repealing clause? At the time the act of May 9, 1918, was passed, aliens had been drafted into the service of our country along with citizens, and those who had not claimed exemption therefrom were being prepared for service abroad. Our country was preparing to send them to France and to Belgium and to wherever else the Government should deem it advisable to send them. The purpose of the passage of the act of May 9, 1918, was that our Government might be able to extend to and secure for <u>all</u> in our Military Service and all in our Naval Service the protection and treatment they were entitled to expect on account thereof. We could not insist upon our allies or upon our

enemies treating aliens in our service as citizens of the United States. Therefore provision was made for the speedy naturalization of all aliens in the Military Service and all in the Naval Service and for the elimination of nearly all the "red tape" that interferred therewith. Aliens of all races, those within section 2169 and those without, Caucasians and Orientals, Japanese, Chinese and Koreans, had been drafted; and those who had not claimed exemption were in service, and were about to be sent abroad to fight for us. Was it not as much our duty to extend the protection which citizenship only would afford to the Orientals in our service as it was to extend it to others? We had drafted them into our service and they had thought enough of us to be willing to serve, to risk their lives in our service. Was Congress unwilling to grant citizenship to those among them found to possess the qualifications required of others? I hope it is not improper to say that I do not believe Congress was so illiberal. While preparing to send men who had been drafted into our

service out of our country to battle for us and while providing for conferring citizenship on them that we might be able to give them the protection and treatment they deserved and were entitled to expect of us on account of the service in which they were engaged, Congress was not so illiberal as to exclude from the benefits of the provision it was making for those in our service those among them who were not of the Caucasian or African races because they were not of either of said races.

My attention has been called to the fact that when the Conference Report on H.R. 8152, which became the act of May 9, 1918, was before the House of Representatives, the Chairman of the Committee which reported the bill, in answer to questions said that the act would not authorize the naturalization of Orientals, that section 2169 of the Revised Statutes would prevent. I have read the discussion that occurred in the House and that which occurred in the Senate when the Conference Report was before them. It is evident that the Chairman of the

House Committee did not realize that the effect of the language of the repealing clause, "except as specified in the seventh subdivision", etc., would take the specifications of the seventh subdivision out of the operation of section 2169, but whether he realized it or not, such is the effect of said language. Nothing that was said in the Senate relates to the question. Other members of the House may have understood the matter and disagreed with the construction placed on the language by the Chairman; and the Senate may have understood the question, may have known that the language of the repealing clause referred to would take the specifications of the seventh subdivision out of section 2169, and have voted for the adoption of the Conference Report on that account. And it is to be noted that though the bill originated in the House, it was amended in the Senate by striking out all after the enacting clause and substituting the language which is now found in the act with such minor changes as were agreed to in the Conference.

But, however, that may be, as was said by Chief Justice Taney in Aldridge v. Williams, 3 How. 24, "The judgment of the court can not in any degree be influenced by the construction placed upon the act by individual members of Congress in the debate which took place on its passage". The reason of this rule was so well explained by Mr. Justice Story in Mitchell v. Great Works Milling, etc., Co., 17 Fed. Cases No. 9662, it is sufficient to refer to what he said without commenting upon it. See 1 Fed. Stat. Ann. (2d Ed.), p. 62, Statutes and Statutory Construction.

Unless all the language of the repealing clause is useless surplusage, it takes all the specifications of the seventh subdivision out of the operation of section 2169 of the Revised Statutes, and leaves all other parts of the act under it.

INDEX.

CASES CITED.

STATUTES CITED.

For the convenience of the court a pamphlet containing the naturalization laws, issued by United States Department of Labor, published by Government Printing Office June 15, 1924, has been appended to this brief as Exhibit "E", and an index of the pertinent statutes as they appear in this pamphlet immediately precedes the exhibit.

OTHER AUTHORITIES.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 231.

HIDEMITSU TOYOTA,
DEFENDANT, APPELLANT,
v.
UNITED STATES OF AMERICA,
PETITIONER, APPELLEE.

On a Certificate from the United States Circuit Court of Appeals for the First Circuit.

BRIEF FOR HIDEMITSU TOYOTA.

STATEMENT OF THE CASE.

On May 14, 1921, Hidemitsu Toyota, a person of the Japanese race born in Japan, and for over nine years a member of the United States Coast Guard Service, filed his petition for naturalization in the District Court of the United States for the District of Massachusetts, relying on the Act of May 9, 1918 (c. 69, 40 Stat. 543, Comp. Stat. 1918, Sec. 4352 (7)–(13), and Sec. 4352aa), and on the Act of July 19, 1919 (c. 24, Sec. 1, 41 Stat. 222, Comp. Stat. 1923, Supp. Sec. 4352aaa). The petition was granted by virtue of said acts, and on May 16, 1921, a certificate of naturalization, No. 1,591,923, was issued to him. (Ctf. 2.)

Subsequently the Government brought a petition under Section 15 of the Act of June 29, 1906, to cancel the certificate of naturalization issued to Toyota on the ground that he was a member of the Japanese race. It is conceded by the Government that if a person of the Japanese race born in Japan may be legally naturalized by virtue of either of the acts referred to above Toyota is legally naturalized. (Ctf. 2.)

In the District Court it was held that Toyota was not entitled to be naturalized and an order was entered canceling his certificate of citizenship, from which order an appeal was taken to the United States Circuit Court of Appeals for the First Circuit. (Ctf. 2.)

That court on November 10, 1923, addressed a certificate to this court, asking instruction upon the following questions:

(1) Whether a person of the Japanese race, born in Japan, may legally be naturalized under subdivision 7, Section 4 of the Act of June, 29, 1906, as amended by the Act of May 9, 1918.

(2) Whether such subject may legally be naturalized under the Act of July 19, 1919 (c. 24, Sec. 1, 41 Stat. 222; Comp. Stat. 1923, Supp. Sec. 4352aaa).

ARGUMENT.

I.

HISTORY OF THE NATURALIZATION LAWS.

Under the Constitutional grant of power "to establish a uniform rule of naturalization" (Const. Art. 1, Sec. 8) Congress has authority to provide for the naturalization of Asiatics in the same manner as other aliens.

The first Naturalization Act in 1790 provided that "any alien *being a free white person*, may be admitted to become a citizen . . . on the following conditions and not otherwise". (1 Stat. 103, c. 3). In 1870 this was extended to include aliens of African nativity and persons of African descent. (16 Stat. 256.)

In the Revised Statutes these provisions were grouped together in Title XXX, under the heading "Naturalization" and were restated so that Section 2165 prescribed the procedure in the ordinary case; Section 2166 afforded a less cumbrous procedure for the naturalization of aliens who had served as United States soldiers and had been honorably discharged; and Section 2169 provided a racial limitation, restricting all the other provisions of the naturalization title to certain classes as follows:

> R. S. Sec. 2169. "The provisions of this title shall apply to aliens being free white persons; and to aliens of African nativity and to persons of African descent. (R. S. 1876, p. 380; 1 Comp. Stat. 1901, p. 1333.)"

To use the language of Mr. Justice Sutherland in the recent case of *Ozawa* v. *United States*, 260 U.S. 178 at page 192:

> "In all of the Naturalization Acts from 1790 to 1906 the privilege of naturalization was confined to

white persons (with the addition in 1870 of those of African nativity and descent), although the exact wording of the various statutes was not always the same."

In order to put a check on the frauds and crimes prevalent in connection with naturalization (House Report No. 1789, 59th Cong., 1st Sess., p. 3), Congress passed the Act of June 29, 1906, entitled "An Act to establish a Bureau of Immigration and Naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States". This Act dealt primarily with the subject of procedure, and Section 2169 of the Revised Statutes was left unchanged and unmentioned.

Clearly the provisions of the Act of June 29, 1906, are limited by R. S. Section 2169, and a person of the Japanese race born in Japan is not eligible to naturalization under this Act as so limited.

Ozawa v. *United States*, 260 U. S. 178 (1922).

But there is no reason why Congress could not or should not, if it saw fit, admit a limited class of Asiatics, provided the act is uniform, without constituting an abandonment of its long continued policy.

II.

THE APPELLANT IS ENTITLED TO NATURALIZATION UNDER THE ACT OF JUNE 29, 1906, AS AMENDED BY ACT OF MAY 9, 1918.

A. Provisions of Statutes Applicable.

By the Act of May 9, 1918, certain sections of the Act of June 29, 1906, were amended and certain new sections were added. Section 4 of the Act of 1906, as amended by the Act of 1918, reads:

Sec. 4. "That an alien may be admitted to become

a citizen of the United States in the following manner and not otherwise: — "

The first six subdivisions under Section 4 are continued in the Act of 1918 in practically the same language as they appeared in the Act of 1906. The seventh subdivision (which is one of the sections under which the appellant contends he is entitled to naturalization) is new, some of the provisions having been taken from prior acts, with minor changes in the language, and some having been enacted for the first time. The material part of the seventh subdivision referred to reads as follows:

> "*Seventh. Any native-born Filipino* of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for reenlistment; *or any alien, or any Porto Rican not a citizen of the United States,* of the age of twenty-one years and upward, *who has enlisted* or entered or may hereafter enlist in or enter the armies of the United States, . . . or *in the United States Navy* or Marine Corps, *or* in the United States *Coast Guard,* or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States . . . *may, on presentation of the required declaration* of intention *petition for naturalization without proof of the required five years' residence* within the United States . . .; *any alien serving in* the military or *naval service* of the United States *during* the time this country is

What is specific?

> engaged in *the present war may file his petition* for naturalization *without* making the preliminary *declaration of intention* and *without proof* of the required *five years' residence* within the United States; any alien declarant who has served in the United States Army or Navy, or the Philippine Constabulary, and has been honorably discharged therefrom, and has been accepted for service in either the military or naval service of the United States on the condition that he becomes a citizen of the United States, may file his petition for naturalization upon proof of continuous residence within the United States for the three years immediately preceding his petition, . . . and any alien, or any person owing permanent allegiance to the United States embraced within this sub-division, may file his petition for naturalization in the most convenient court without proof of residence . . . provided . . . he passes the preliminary examination. . . ."

(Italics herein and throughout remainder of brief are by counsel.)

Had Congress said nothing more, it is clear that this section, like the rest of Title XXX, would be restricted by R. S. Section 2169, and that Asiatics would not be eligible to naturalization. This same question, under similar provisions of the naturalization laws, has been decided on numerous occasions.

> *In re Kumagai*, 163 Fed. 922 (1908);
> *Bessho* v. *United States*, 178 Fed. 245 (1910);
> *Ozawa* v. *United States, supra.*

But Congress did not stop here, and we must examine Section 2 or the repealing clause of the Act of May 9, 1918. The second paragraph of this clause reads:

"That all acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed; but nothing in this act shall repeal or in any way enlarge section twenty-one hundred and sixty-nine of the Revised Statutes, except as specified in the seventh subdivision of this act and under the limitation therein defined."

Does this provision except subdivision 7 of Section 4 of he Act of 1918, from the restrictions of R. S. Section 169? Clearly it does except certain persons specified in his subdivision 7. There is no question but that Section 169 of the Revised Statutes restricts the provisions of the Act of 1918 except as specified. The only question is, to what do the words "except as specified in the 7th subdivision of this Act" refer?

In re Saito, unreported, District of Hawaii (July 12, 1919).

3. The Act of May 9, 1918, Must be Construed According to the Natural Meaning of the Words.

It is a well settled rule of statutory construction that a statute will be read according to the natural import of the language. Where the language is unambiguous there is no room for construction on the part of the courts.

Caminetti v. *United States*, 242 U. S. 470 (1916).

Day, J., at page 485:

"It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms.

Lake County v. *Rollins*, 130 U. S. 662, 670, 671; *Bate Refrigerating Co.* v. *Sulzberger*, 157 U. S. 1, 33; *United States* v. *Lexington Mill and Elevator Co.*, 232 U. S. 399, 409; *United States* v. *Bank*, 234 U. S. 245, 258. . . .

Statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them."

And see

U. S. v. *Standard Brewery*, 251 U. S. 210, 217 (1919).
Deganay v. *Lederer*, 250 U. S. 376, 381 (1918).

What is the obvious and natural meaning of the words in the statute before us? The repealing clause reads:

"But nothing in this Act shall repeal or in any way enlarge Section 2169 of the Revised Statutes, except as specified in the seventh subdivision of this act and under the limitation therein defined."

The necessary inference is that in subdivision 7 we shall find some class or classes specified which but for the words "except as specified" would be restricted by R. S. Section 2169. Obviously this must refer to a class of persons who under prior laws were not subject to naturalization.

In construing an exception to the Constitution Marshall, C. J., said in the case of *Brown* v. *Maryland*, 12 Wheat. 419 at page 438:

"If it be a rule of interpretation to which all assent, that the exception of a particular thing from general words, proves that, in the opinion of the lawgiver, the thing excepted would be within the general clause had the exception not been made, we know no reason why this general rule should not be as applicable to the constitution as to other instruments."

Looking at subdivision 7, what persons are specified? Reading this section, we find that "*any Filipino*" who has declared his intention and who has served in certain forces for a period of years and who may be honorably discharged "*or any alien, or any Porto Rican* not a citizen of the United States", who has certain qualifications of service in the United States forces, or on certain United States vessels may petition for naturalization without proof of the required five years' residence. Then there are certain other provisions with reference to an alien filing his petition for naturalization without a declaration of intention, and the manner of filing, etc., but none of these have any bearing on the question except as they show that every provision of the 7th subdivision has in view the speedy naturalization of those engaged in any public service of the United States having relation to the conduct of the war. Is there any question but that the natural meaning of these words is that any Filipino and any alien and any Porto Rican, all having the qualifications set forth, are the persons "specified" in the 7th subdivision?

As it will later be shown that both Filipinos and Porto Ricans were already eligible to naturalization and needed nothing to save them from the limitation of R. S. Section 2169, the words "except as specified" must have had reference to "any aliens" as the class as to which R. S. Section 2169 was repealed or enlarged.

C. If the words of the Act of June 29, 1906, as Amended by the Act of May 9, 1918, are taken in their Natural Meaning, the Statute is Reasonable.

Citizenship in general is membership in a political society implying a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, the one being compensa-

tion for the other. In the United States a naturalized citizen stands on an equal footing with the native citizen in all respects save that of eligibility to the presidency.

Luria v. *United States*, 231 U.S. 1, 22 (1913).

Mr. Chief Justice White in giving the opinion of this court in the *Selective Draft Law Cases*, 245 U.S. 366 (1917), summarized the situation at page 378:

> "It may not be doubted that the very conception of a just Government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need and the right to compel it. Vattel, Law of Nations, Book III, c. 1 and 2."

At the date of the passage of the Act of May 9, 1918, aliens had been drafted into our service as well as citizens and those who had not claimed exemption because of their alien status were being prepared for foreign service. The purpose of subdivision 7 of Section 4 of the Act of 1918 may best be discovered from the statement by Mr. Hayes in debate in the House of Representatives, 56 Congressional Record, page 6010:

> "Now the *principal purpose* of this subdivision 7 *is* to permit the *immediate naturalization*, as I recall, *of* something like *126,000 aliens who are now in the Army, of the United States*—many of them now in France and many more of them going—to naturalize them immediately, *so that when they get over there they will have the right of the protection of this country as citizens of the United States, so far as we can give it to them.* At present we cannot even say that they are citizens. *We should have the power to grant them protection. We have no right to attempt it under International Law. We desire to put these men* and the families of these men *who are serving and offering their lives*

on foreign soil for this country on the same basis as soldiers who are citizens of the United States by giving them the right to become immediately citizens by naturalization. That is the immediate purpose of subdivision 7, and I think it does this, and does it so far as we are able to do it, by throwing around the naturalization proceedings the necessary protection, so that the right shall not be abused.

Of the 126,000 who are not citizens, 76,000 have not even declared their intention to become citizens of the United States."

From this statement the purposes of the legislation appear fully as applicable to the few Japanese and Chinese serving in our forces at the time as to the other aliens.

In the language of Judge Vaughan in the unrecorded case *In re Saito, supra,* page 24:

> "Was it not as much our duty to extend the protection which citizenship only would afford to the Orientals in our service as it was to extend it to others? We had drafted them into our service and they had thought enough of us to be willing to serve, to risk their lives in our service. Was Congress unwilling to grant citizenship to those among them found to possess the qualifications required of others? I hope it is not improper to say that I do not believe Congress was so illiberal."

It is suggested that the construction contended for by the appellant amounts to a complete alteration on the part of Congress of its policy adhered to since the beginning of our Government to exclude Asiatics. It is submitted, however, that the Act of 1918 effected no such radical change. The Act was simply a declaration that a certain small group of Asiatics who had very commendable service

records should be entitled to naturalization and to the accompanying protection of our laws.

While an exhaustive search of the records of the Army and Navy Departments of the Government has been impossible, yet some figures relative to the number of Asiatics eligible to naturalization under this Act have been obtained. According to statistics in the War Department relating to the registration and classification of aliens under the Selective Service Law, of the total number of Chinese and Japanese aliens registered for the draft 1,313 Chinese and 983 Japanese were classified in Class I, which means that they were found liable to render military service. No figures are available as to how many men classified were actually inducted into the service or how many entered the military service as volunteers. (Exhibit A—Letter from the Adjutant General's office, War Department, August 13, 1924.) According to these figures, at the outside only 2,296 Japanese and Chinese could be naturalized under the Act of 1918 in addition to men already in the service. Records of the Navy Department show 317 Asiatics having served in the United States Navy during the war. (Exhibit B—Letter from Navy Department, September 4, 1924.)

Legislation making possible the naturalization of 2,500 loyal aliens with commendable records in the military service of the United States can hardly be considered as a complete overturn of the established policy of the United States.

It is contended by the Government that to effect such a complete alteration in the naturalization policy of this country very clear language must be used. It is submitted that the language used in this statute is clear. It was not necessary for Congress, having expressed itself that certain specified classes are no longer to be limited by R. S. Section 2169, to go still further and say in effect

this means that certain Asiatics heretofore barred from naturalization shall now be eligible.

A similar question came up under the patent laws of the United States in the case of *Bate Refrigerating Company* v. *Sulzberger*, 157 U. S. 1 (1894). There it was contended that to construe a statute as requested by the appellee was to upset the entire policy of the Government with respect to patents. Debates in Congress were referred to to show the intention of the legislature. Mr. Justice Harlan in giving the opinion of the court said in part, page 41:

> "And upon the face of the Act, as it finally passed, there are such alterations of the prior law as to impose upon this court the responsibility of determining the effect of such alterations. We cannot accept as controlling, much less conclusive, the opinion of the House Committee on the Revision of the Laws of the United States, as reported by Mr. Jenckes, that the bill it reported embodied only the existing law. Nor can we assume that the House of Representatives, much less the Senate, based their action upon the opinion of individual members of the House as to the scope and legal effect of the report of the revisers. . . .
>
> It is quite true, as the plaintiff contends, that Congress did not intend by the Act of 1870 to upturn the entire policy of the government in reference to patents; but, beyond all question, its final action shows that it made and intended to make important amendments of existing laws."

D. The Construction of the Act of May 9, 1918, Contended for by the Appellant is the Only Construction which will Give Effect to all the Words.

The Government argues that the *words* "any alien" in subdivision 7 of Section 4 are limited by R. S. Section 2169. This forced construction results from a misinterpretation of Section 2169 itself. When it is realized that Section 2169 is not a restriction on the *words* "any alien" but simply limits the provisions of the title it is difficult to see why the words should remain subject to the restrictions of the Section after the subdivision itself has been released.

By taking the words of subdivision 7 in their natural meaning, and seeing what persons are specified, the interpretation, if indeed interpretation is needed, becomes simple. The persons specified would seem to be *"any Filipino"*, *"any alien* or *any Porto Rican"* with the qualifications defined.

From the language of the Repealing clause that R. S. Section 2169 shall not be repealed or enlarged, *except as specified in subdivision 7*, it is clear that Congress intended to enlarge Section 2169 as to certain persons. R. S. Section 2169 is a strictly racial limitation. It does not set forth the qualifications necessary to obtain naturalization, but states the races to whom the privileges of naturalization are limited. Therefore, any enlargement of R. S. Section 2169 must extend the privileges of naturalization to some race or races not heretofore eligible. The exception must have reference to a racial-wise enlargement. That it is not intended to extend the privileges to all members of the race, released from the limitations of Section 2169, but only to those bearing the qualifications required by subdivision 7 is clear from the final words in the repealing Act, *"and under the limitation therein defined"*.

It being, therefore, clear that Congress intended by sub-

division 7 of this new statute to make an addition to the races which were previously eligible to naturalization, it remains to determine just what was the addition intended. The Government has argued that the addition was solely the inclusion of Filipinos and Porto Ricans. This cannot have been the fact because Filipinos and Porto Ricans could already be naturalized under Section 30 of the Act of June 29, 1906, and therefore as to them any addition would be unnecessary and superfluous. Section 30 of the Act of June 29, 1906, provides in substance that:

> " All the applicable provisions of the naturalization laws . . . shall apply to and be held to authorize the admission to citizenship of *all persons not citizens, who owe permanent allegiance to the United States* and who may become residents of any State or organized Territory of the United States."

This section has been held to permit naturalization of Filipinos and Porto Ricans in:

In re Bautista, 245 Fed. 765, N. D. Cal., Circ. J. Morrow (1917).

In re Giralde, 226 Fed. 826, D. Md., Rose, J. (1915).

In re Mallari, 239 Fed. 416, D. Mass., Morton, J. (1916).

In re Monico Lopez—Naval Digest 1916, p. 207 (Supreme Court of D. C. 1915).

Opinion of Atty. Gen. Bonaparte, 27 Op. Atty. Gen. 12.

Letter of Solicitor Gen. Davis to Secretary of Labor, January 4, 1916, reaffirming opinion of Atty. Gen. Bonaparte.

The contrary was held in:

In re Alverto, 198 Fed. 688 (1912);
In re Rallos, 241 Fed. 686 (1917);

which, however, were discredited by Circuit Judge Morrow in the later case of *In re Bautista* (*supra*); Morton, D. J., also disagreed with these cases in *In re Mallari* (*supra*), pointing out at page 418 that the decision in *In re Alverto* might be supported on other grounds.

It is also interesting to note that although Vaughan, J. (*In re Saito, supra*) originally followed *In re Alverto* (*supra*), he subsequently changed his views as a result of the opinion of Circuit Judge Morrow in the case of *In re Bautista* (*supra*).

Since prior to the Act of 1918 Filipinos and Port Ricans were not restricted by R. S. Section 2169 the permitting of certain Filipinos and Porto Ricans qualified by their military service to become naturalized without the usual formalities was in no way a repeal or an enlargement of R. S. Section 2169 and required no exception from the limitations of this section. All other aliens except Asiatics or the yellow race could of course be naturalized under R. S. Section 2169, so unless the words "except as specified" used in the repealing clause of the Act of May 9, 1918, refer to "any aliens" as specified in subdivision 7 and these words in turn include in their meaning "Asiatics", the entire exception becomes superfluous.

Congress is presumed to know that it was unnecessary to except Filipinos and Porto Ricans from the limitations of Section 2169.

> *Sewing Machine Companies*, 18 Wall 553, 584 (1873).
> *In re Saito, supra*, p. 20

In *United States* v. *Falk & Bro.*, 204 U. S. 143 (1906), at page 150, Mr. Justice McKenna said: "And the Attorney General's opinion cannot be overlooked." So the opinion of Attorney General Bonaparte (27 Op. Att'y Gen. 12) that Filipinos and Porto Ricans are not prevented from naturalization by R. S. Section 2169 must be ob-

served, and it is not logical to assume that Congress intended any such forced construction as to nullify part of the words of the statute. All the words of a statute will be given effect where possible.

Bend v. *Hoyt*, 13 Pet. 263, 272 (1839).
Washington Market Co. v. *Hoffman*, 101 U.S. 112, 117 (1879).
U. S. v. *Standard Brewery Co.*, 251 U.S. 210, 218 (1919).

E. The Words "Any Alien" as Used in the Naturalization Laws are Nowhere Defined and Retain their Natural Meaning.

The Government contends that on numerous occasions the words "any alien" have been judicially construed to mean only aliens within the limitations of R. S. Section 2169. Courts have frequently decided that the provisions of the naturalization laws in which the words "any alien" appear are restricted by R. S. Section 2169; but it is the provision as a whole and not the words themselves which are so limited. In most cases the result is the same whether it is said the provision or the words "any alien" appearing in the provision are limited and this has led to loose and inaccurate language on the part of the courts in dealing with this subject.

It was into this confusion that the court stumbled in the case *In re Para* (269 Fed. 643), and the decision contrary to the appellant's contention in the court below following *In re Para* may also be attributed to this error.

The words "any alien" when used in the naturalization laws are nowhere defined by Congress. Circuit Judge Morrow discussed who are aliens under the naturalization laws of the United in the case of *In re Bautista* (*supra*), page 771:

"Who are aliens under the naturalization laws of the United States has not been definitely defined by the Supreme Court of the United States. But in *Low Wah Suey* v. *Backus*, 25 U. S. 460, 473, 32 Sup. Ct. 734, 737 (56 L. Ed. 1165), the court, in construing the alien immigration act of February 20, 1907, (chapter 1134, 34 Stat. 898), adopted the definition given in 2 Kent, 50; 1 Bouvier's Law Dic. 129. 'An alien has been defined', says the court, "to be 'one born out of the jurisdiction of the United States, and who has not been naturalized under their Constitution and laws.'" This definition is also found in Webster's Dictionary; Century Dictionary; Black's Law Dictionary; 2 Cyc. 85; 2 Corpus Juris, 1043; 2 Am. & Eng. Ency. (2nd Ed.) 64; 1 Ruling Case Law, 794; (and cases cited).

The language of the limiting clause is clear. R. S. Section 2169: *"The provisions of this title shall apply to aliens being free white persons, etc."* This is quite different from saying that the words "any aliens" as used in this title shall mean any aliens being free white persons, etc.

That the Supreme Court of the United States regards R. S. Section 2169 as a limitation applying to the provisions of naturalization laws rather than a limitation of the meaning of the words "any alien" is clear from the following quotation: *Ozawa* v. *United States*, 260 U. S. at page 193:

"The provisions of Title XXX affected by the limitation of Sect. 2169, originally embraced the whole subject of naturalization of aliens. *The generality of the words* in Sec. 2165, *'An alien may* be admitted, . . . *"was restricted by Sec. 2169 in common with the other provisions of the title.* The words 'this Title' were used for the purpose of identifying that

provision (and others), *but it was the provision which was restricted.* That provision having been amended and carried into the Act of 1906, Sec. 2169 being left intact and unrepealed, it will require something more persuasive than a narrowly literal reading of the identifying words 'this Title' to justify the conclusion *that Congress intended the restriction to be no longer applicable to the provision."*

F. The Act of 1918 Repealed Part of the Act of June 30, 1914, and Part of the Act of June 25, 1910, Restating the Repealed Parts but Omitting in the Re-Enactment of the Act of 1914 Significant Words Used in the Former Act. Such Omission Implies an Alteration in the Purpose.

Section 2 of the Act of 1918 specifically repealed parts of the Act of June 30, 1914, and of the Act of June 25, 1910, quoting the parts repealed. The *part* of the *Act of 1914* repealed began as follows:

> " Any alien of the age of 21 years and upward *who may under existing law become a citizen* of the United States who has served . . . in the United States Navy . . . . or who has completed four years in the Revenue Cutter service . . . shall be admitted to become a citizen . . . without any previous declaration and without proof of residence on shore."

The Act of 1918 in sub-division 7 of Section 4 re-enacted the general purposes of the repealed portion of the Act of 1914 indicated above using the following words:

> " Any alien, or any Porto Rican not a citizen of the United States, of the age of 21 years and upward, who has enlisted . . . in the United States Navy . . . or in the United States Coast Guard . . . may on pres-

entation of the required declaration . . . petition for naturalization without proof of the required five years residence. . . ."

The *part* of the *Act of 1910* repealed began as follows:

"That paragraph 2 of Section 4 . . . be amended by adding . . .: Provided further: That *any person belonging to the class of persons authorized and qualified under existing law to become a citizen* of the United States . . . who, because of misinformation in regard to his citizenship . . . acted under the impression that he was . . . a citizen . . . may . . . receive . . . a final certificate of naturalization. . . ."

Subdivision 10 of Section 4 re-enacted the general purposes of the repealed portion of the Act of 1910 indicated above using the following words:

"Tenth. That *any person* not an alien enemy, *who* resided uninterruptedly within the United States during the period of five years next preceding July 1st, 1914, and *was on that date otherwise qualified to become a citizen* . . . except that he had not made the declaration . . . and who erroneously exercised the rights and performed the duties of a citizen . . . in good faith, may file the petition . . . without . . . declaration of intention . . . and . . . may be admitted as a citizen . . ."

The portion of the Act of June 30, 1914, indicated above, was appended to the Naval Appropriation Act of 1914, to facilitate the procedure for naturalizing aliens serving in the Navy. Its purpose was stated by Rose, D. J., in the case of *In re Giralde*, 226 Fed. 826 (1915) at page 827:

"One who re-enlists in the Navy or in its allied

service, is entitled to an increase of pay, provided he is a citizen. A non-citizen serving in the Navy, and who wishes to re-enlist, has a strong practical reason for desiring naturalization. An enlisted man, however, often found it hard to comply with the requirements of the general naturalization. He seldom could prove residence for a year in any particular state. Under that law 90 days must elapse between the application for naturalization and the hearing. In that interval he would often be sent to sea. Congress wished to make easy the naturalization of men who had faithfully served the flag. *Its purpose was to enable all those who were serving in the Navy, and who were not citizens, but were otherwise qualified to become such, to do so, and thereby obtain the increased pay reserved to citizens.*"

The portion of the Act of June 25, 1910, indicated above, was enacted for the benefit of aliens who through misinformation had failed to take the necessary action to become naturalized.

Whereas in its re-enactment of the Act of 1910 Congress has carefully continued the limitation to persons

> " otherwise qualified to become a citizen of the United States ",

in its re-enactment of the Act of 1914 Congress with equal care has omitted the limitation to aliens:

> " who may under existing law become a citizen ".

That an alteration of purpose was contemplated by this omission is further demonstrated by the fact that the omission occurs in the 7th subdivision of Section 4 of the Act of 1918, which is the very section referred to in the closing paragraph of the Act of 1918, saying:

> *" But nothing in this act shall repeal or in any way enlarge Section 2169 of the Revised Statutes except as specified in the 7th subdivision of this act and under the limitation therein defined."*

In the case of *Pennsylvania Railroad Company* v. *International Coal Company*, 230 U. S. 184 (1912), the court discussed the omission of a provision which existed in a previous statute—Lamar, J., page 198:

> " The fact that this provision . . . was omitted from the Act as finally reported to both Houses and passed, is not only significant, but so conclusive against the contention of the plaintiff that it quotes—not the report of the conference committee, but a statement made by a member of the Senate Conference Committee, to support the present argument that Sec. 8 means the same thing as the omitted clause. But while they may be looked at to explain doubtful expressions, not even formal reports—much less the language of a member of a Committee—can be resorted to for the purpose of construing a statute contrary to its plain terms, or to make identical that which is radically different. *United States* v. *Freight Association*, 166 U. S. 290, 318; *Maxwell* v. *Dow*, 176 U. S. 581, 601."

That an omission of words implies an omission of purpose is true even if the words are left out by mistake. *Hobbs* v. *McLean*, 117 U. S. 567 (1885). Woods, J., page 579:

> " We cannot insert the exception. When a provision is left out of a statute, either by design or mistake of the legislature, the courts have no power to supply it. To do so would be to legislate and not to construe. ' We are bound,' says Mr. Justice Buller, in *Jones* v. *Smart*, 1 T. R. 44, ' to take the act of Par-

liament as they have made it,' and Mr. Justice Story, in *Smith* v. *Rines*, 2 Summer, 338, 354, 355, observes: 'It is not for courts of Justice *proprio marte* to provide for all the defects or mischiefs of imperfect legislation'."

See also *Bardes* v. *Hawarden Bank*, 178 U. S. 524, 537 (1900), *Lapina* v. *Williams*, 232 U. S. 78 (1913). This latter case involved the construction of an Immigration Act in which the word "immigrants" was left out after the word "alien". It was held that this was intended to extend the statute to cover any alien.

G. As the Language of the Act of May 9, 1918, is Clear, Congressional Debates and Committee Reports are Not Admissible to Influence the Interpretation.

In this case the language used by various members of the House of Representatives in the Debates in Congress and Committee Reports recommending the passage of the act are referred to for the purpose of ascertaining the intention of Congress. The remarks made by Story, J., on this subject while sitting as a Circuit Court judge are worthy of quotation:

Mitchell v. *Great Works Milling Co.*, Fed. Cas. 9, 662, Circuit Court, D. Maine (1843):

"At the threshold of the argument, we are met with the suggestion, that when the act was before Congress, the opposite doctrine was then maintained in the House of Representatives, and it was confidently stated, that no such jurisdiction was conferred by the act, as is now insisted on. What passes in Congress upon the discussion of a bill can hardly become a matter of strict judicial inquiry; and if it were, it could scarcely be affirmed, that the opinions of a few members, expressed either way, are to be considered as the judgment of the whole house,

or even of a majority. But in truth, little reliance can or ought to be placed upon such sources of interpretation of a statute. The questions cannot be, and rarely are, there debated upon strictly legal grounds, with a full mastery of the subject and of the just rules of interpretation. The arguments are generally of a mixed character, addressed by way of objection, or of support, rather with a view to carry or defeat a bill, than with the strictness of a judicial decision. But if the house entertained one construction of the language of the bill, non constat, that the same opinion was entertained either by the Senate or by the President; and their opinions are certainly in a matter of the sanction of laws, entitled to as great weight as the other branch. *But in truth, courts of justice are not at liberty to look at considerations of this sort.* We are bound to interpret the act as we find it, and to make such an interpretation as its language and its apparent objects require. *We must take it to be true, that the legislature intend precisely what they say, and to the extent which the provisions of the act require, for the purpose of securing their just operation and effect.* Any other course would deliver over the court to interminable doubt and difficulties; and we should be compelled to guess what was the law, from the loose commentaries of different debates, instead of the precise enactments of the statute. Nor have there been wanting illustrious instances of great minds, which, after they had, as legislators, or commentators, reposed upon a short and hasty opinion, have deliberately withdrawn from their first impressions, when they came upon the judgment seat to re-examine the statute or law in its full bearings.

Passing from these considerations, which have been drawn from us by the suggestions at the bar, let us

look at the actual provisions of the bankrupt act of 1841 (chapter 9)."

This court has frequently decided that the meaning of an Act of Congress is not to be determined from statements used in debate in Congress and from Committee Reports. To be sure the latter will be given more weight than the former where the meaning of the act is obscure but not even these can be referred to to alter the plain language of a statute.

Wisconsin R. R. Com. v. *C., B. & Q. R. R. Co.*, 257 U. S. 563 (1921).

In that case the court said at page 589:

"Committee Reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute where its language is doubtful or obscure. *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 475. But when taking the act as a whole, the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. *Pennsylvania R. R. Co.* v. *International Coal Mining Co.*, 230 U. S. 184, 198. *Caminetti* v. *United States*, 242 U. S. 470, 490. Such aids are only admissible to solve doubt and not to create it. For the reasons given, we have no doubt in this case."

Standard Fashion Co. v. *Magrane-Houston Co.*, 258 U. S. 346, 356 (1921).

To be sure, in the debate of this bill in Congress it was stated that the privileges of naturalization were not extended by subdivision 7 to cover Asiatics, but in the Committee Reports no such positive statement was made. It was simply said that the new section did cover Filipinos. The slight negative inference which might be drawn from

the failure of these Reports to point out the enlargement of the class of persons made subject to naturalization cannot be regarded as sufficient to overcome the evidence of the legislative intention drawn from the plain and unambiguous language of the Act itself emphasized by the contrast with that of the Act of 1914 which it supplanted.

Nor can it be forcefully argued that the Act of 1918 in consolidating several former naturalization acts may have been inadvertently extended to cover new classes without any actual intention of departing from the language of the former statute in this respect. This is not a mere revision and consolidation of former statutes to which a new interpretation is not to be given without some substantial change in phraseology. It is a new statute supplanting, changing and enlarging the former statutes in many respects and in which there is a significant change of phraseology.

Hecht v. *Malley*, 265 U. S. 144, 155, 156 (1923).

H. The Weight of Authority is in Favor of the Naturalization of the Appellant.

The Government lays great stress upon the fact that three district courts in addition to the lower court in this case have held Japanese ineligible to naturalization under the Act of May 9, 1918, and argues that the District Court of Hawaii alone (*In re Saito, supra*) has passed upon this question favorably to the Japanese. No reference is made to the many cases throughout the United States where Asiatics have been granted certificates of naturalization by various district courts.

Although complete figures are not available to the appellant, the records of the Bureau of Naturalization show that at least eighty-seven Asiatics have been naturalized in continental United States under the Acts in question divided among ten naturalization districts (letters from

Bureau of Naturalization, Exhibits C and D). All but nine of these were naturalized prior to the enactment of the Statute of July 19, 1919. In addition two hundred and thirteen Asiatics were naturalized by the United States District Court for the District of Hawaii.

As the naturalization of Asiatics was a departure from the former practice, the point must invariably have been called to the attention of the court by the Naturalization Examiners of the Districts, and the certificate granted by the court only after a careful examination of the Act. This means that at least eleven United States District Court judges have interpreted the Act as confirming the naturalization of Asiatics. Against the decision of Judge Lowell in the principal case cancelling the naturalization papers of the appellant, we have the decision of Judge Morton in granting the papers. Similarly in the other jurisdictions where the courts have allowed a petition cancelling the naturalization previously granted by another judge of the same court, the court must be regarded as divided on this question.

At the trial of the principal case in the District Court, Chief Naturalization Examiner James Farrell for the New England District testified that immediately after the passage of the Act of 1918 it was the disposition of the Bureau of Naturalization in Washington to approve naturalization of Japanese and Chinese serving in our forces. The majority of district courts throughout the United States were naturalizating such applicants with the knowledge and acquiescence of the Department and this was the practice in the Massachusetts District.

The construction placed upon a statute by an executive department charged with its administration is entitled to great weight.

U. S. v. *Cerecedo Hermanos y Company*, 209 U. S. 338 (1907).

Jacobs v. *Prichard*, 223 U. S. 200 (1911).
U. S. v. *Hammers*, 221 U. S. 220 (1911).

The fact that after the war was over and the need for further recruits had ceased the Department altered the interpretation formerly placed on the Act of 1918, is of little value in showing the construction placed upon the act contemporaneously with its passage.

I. Aliens Having Rendered Military Service Upon Promise of Citizenship Should Not Later Have the Citizenship Withdrawn.

A layman reading the provisions of the Act of 1918 would immediately say that Asiatics serving in our forces were eligible to naturalization under subdivision 7 of Section 4. There were many loyal Asiatics whose enlistments were about to expire and others contemplating enlisting for the first time. Such aliens were by the Act of May 9, 1918, led reasonably to suppose that if they satisfied the service requirements of the seventh subdivision their race would no longer constitute a bar to their becoming United States citizens. Citizenship carried with it higher pay to the enlisted man, protection of our flag abroad and the opportunity to vote in the country they had chosen for their residence and in the country for which they were willing to risk their lives.

From the very nature of the case it is impossible to ascertain how many Japanese and Chinese were influenced by the assurance of citizenship to enlist in our military forces. Is it just to those who, relying on the natural meaning of the words of our statute, took up arms in behalf of our country, that we should now by a forced interpretation of these words take back the citizenship which we held out to them as an inducement for their service?

This court should not look with favor upon the act of

the United States in holding out the privilege of citizenship to "any alien" as a tempting bait in time of this country's need and then snatching it away again when the need has passed, giving only the apologetic explanation that our lawmakers were ignorant of the meaning of such simple words.

It has been stated by this court that where the department of the Government charged with the execution of a statute has given the statute a construction a court will look with disfavor upon a change whereby parties who have contracted with the Government relying on such a construction might be injured.

> *United States* v. *Alabama R. Co.*, 142 U. S. 615, 621 (1892).
> *Logan* v. *Davis*, 233 U. S. 613, 627 (1914).

To be sure in the final analysis the meaning of the Act of 1918 is solely a question of statutory construction and not to be decided by an appeal to the emotions. But is not the interpretation placed on the words by the average layman and the reasonableness of this interpretation of some importance in deciding the meaning of the words used by Congress—and here the mind unhampered by extraneous matters does find the words clear?

III.

APPELLANT IS ENTITLED TO NATURALIZATION UNDER THE ACT OF JULY 19, 1919.

More than a year after the Act of May 9, 1918, a statute was passed to enable persons who served in our military forces to obtain naturalization within one year after discharge. Act of July 19, 1919 (c. 24, Sect. 1, 41 Stat. 222, Comp. Stat. 1923, Supp. Sect. 4352aaa).

> *"Any person of foreign birth who served in the military or naval forces of the United States during the present war,* after final examination and acceptance by the said military or naval authorities, and shall have been honorably discharged after such acceptance and service, *shall have the benefits of the seventh subdivision of section 4, of the Act of June 29, 1906.* 34 Statutes at Large, part 1, page 596, as amended, and shall not be required to pay any fee therefor; and this provision shall continue for the period of one year after all of the American troops are returned to the United States."

It is the contention of the appellant that he is eligible to naturalization under both of these acts but should it be decided that he is not entitled to naturalization under the Act of May 9, 1918, then it is contended that he is entitled to naturalization under this Act of July 19, 1919.

The intention was to extend the time within which service men could get the benefits of the Act of 1918. As some doubt had arisen to the construction of subdivision 7 of Section 4 of the Act of 1918 with regard to aliens falling within its scope, it was quite natural that Congress in order to clarify this should alter the words and now say "any person of foreign birth". There can

be no doubt but these words include Japanese and it can hardly be contended that the words here used for the first time have been judicially construed to mean simply free whites and persons of African nativity.

The Government contends along the lines suggested in *In re Charr* (273 Fed. 213), that Congress did not intend by the Act of 1919 to extend the persons eligible to naturalization beyond those persons covered by the Act of 1918. The appellant agrees with this contention, but in such a case, if any doubt exists, we look to the latter statute to determine the meaning of the former rather than seek the meaning of the new statute in the language of the old.

> *U. S.* v. *Freeman*, 3 How. 556 (1844), Wayne, J., p. 565:
>
> "If it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute. *Morris* v. *Mellin*, 6 Barn. & Cress. 454; 7 Barn. & Cress. 99."

The suggestion that the Act of 1919 received but slight consideration in Congress, was hastily appended to other legislation, and that, therefore, too much weight should not be placed on its exact words, is almost unworthy of mention. Haste or even carelessness on the part of Congress in passing a statute does not accomplish a transfer of its legislative powers to the courts. The Act of 1919 has expressly placed "Any person of foreign birth" within the "benefits of the 7th subdivision of Section 4 of the Act of June 29, 1906 . . . as amended". Persons specified in subdivision 7 are expressly excepted from the restrictions of R. S. Section 2169. How can the court conclude that the

appellant in this case has not been expressly released from the limitations of the restricting clause? If a correct construction of this statute furnishes an undesirable result, the remedy is with Congress.

CONCLUSION.

For the above reasons it is respectfully submitted that both of the questions certified should be answered in the affirmative.

LAURENCE M. LOMBARD,
Counsel for Appellant.

"A"

WAR DEPARTMENT
The Adjutant General's Office
Washington August 13, 1924.

Messrs. Blodgett, Jones, Burnham & Bingham, 1 Federal Street, Boston, Massachusetts.

Gentlemen: Your letter of August 8, addressed to the Bureau of Statistics has been referred to this office for consideration.

In response to your request to be furnished with information showing the number of Chinese and Japanese aliens who served in the United States military and naval forces during the World War, I have the honor to advise you as follows:

The War Department has never attempted to classify persons who have served in the United States Army during any period whatsoever according to the countries of their nativity, and therefore is not in a position to comply with your request.

An effort to furnish the information desired by you would involve the examination of the individual papers of every one of the 4,051,606 individuals who served in the Army during the war for the purpose of determining the number among them who were Japanese or Chinese aliens. The Department regrets that the pressure of current work precludes it from undertaking a task of these dimensions.

The only statistics available in the War Department pertaining to the subject are those relating to the registration and classification of aliens under the provisions of the Selective Service Law, which have been published on pages 398 to 400 of the Second Report of the Provost Marshal General, a copy of which can be be consulted in almost any large public library or may be purchased from

the Superintendent of Documents, Government Printing Office, Washington, D. C. According to those figures a total of 8,794 Chinese aliens and 14,582 Japanese aliens were registered for the draft from June 5, 1917, to September 11, 1918, of whom 1,313 Chinese and 983 Japanese aliens, respectively, were classified in Class 1, which means that they were found liable to render military service. How many of the men so classified were actually inducted into the service is not known and no statistics whatsoever are available on the number of Chinese or Japanese aliens who entered the military service as volunteers during the period of hostilities.

Inquiry concerning the personnel of the United States Navy and Marine Corps should be addressed to the Navy Department, Washington, D. C.

The stamped envelope which was inclosed with your letter is returned herewith.

Very truly yours,

ROBERT C. DAVIS,
Major General,
The Adjutant General.

"B"

NAVY DEPARTMENT
Bureau of Navigation

Washington, D. C. 4 September, 1924.

Gentlemen:—Replying to your inquiry of 27 August, 1924, concerning the number of Asiatics in the United States Navy during the war, the following information is furnished:

Regular Navy	
Chinese	179
Japanese	102

Naval Reserve Force	
Chinese	30
Japanese	6
Total	317

This Department has no record of receiving your letters dated 1 December and 8 March last.

Very truly yours,

C. B. HATCH
Lt. Comdr., USNRF

Messrs. Blodgett, Jones, Burnham & Bingham, First National Building, 1 Federal Street, Boston, Mass.

"C"

U. S. DEPARTMENT OF LABOR
Bureau of Naturalization

Washington November 21, 1923.

Mr. Laurence M. Lombard, c/o Blodgett, Jones, Burnham & Bingham, Counsellors at Law, First National Bank Building, 60 Federal Street, Boston, Mass.

Dear Sir: Your letter of the 13th instant has been received in regard to Hidemitsu Toyota, whose case you state has been certified to the Supreme Court of the United States.

No attempt has been made in the past to keep an exact and accurate record of Asiatics naturalized under the acts of May 9, 1918, and July 19, 1919. However, the figures herein appearing taken from the files of this office are substantially accurate. Naturalization of Asiatics under the two statutes referred to took place in the following numbers in the naturalization districts named:

Boston	17	Denver	3
New York	7	Chicago	2
Philadelphia	21	San Francisco	26
St. Louis	1	Seattle	1
St. Paul	1		

Of the foregoing 16 were Chinese, 5 were Hindus, 54 were Japanese, 3 were Koreans and 1 was a Malay.

With the exception of 9, all of the other Asiatics before referred to were naturalized prior to the enactment of the law of July 19, 1919.

In addition to the foregoing figures the United States District Court, Honolulu, Hawaii, on April 14, 1919, naturalized about 200 Japanese, 10 Koreans, 2 Chinese and 1 Hindu under the provisions of the act of May 9, 1918. At that time there were about 200 additional applications for naturalization pending which had been made by Japanese, Koreans and Chinese, but it cannot at this time be determined whether these applications were subsequently granted.

Very truly yours,

RAYMOND F. CRIST,
Commissioner of Naturalization.

"D"

U. S. DEPARTMENT OF LABOR
Bureau of Naturalization
Washington October 31, 1924.

Laurence M. Lombard, Esq., Blodgett, Jones, Burnham & Bingham, Counsellors at Law, First National Bank Building, 1 Federal St., Boston, Mass.

Dear Sir: Answering your letter of the 21st inst, I am stating below revised figures for the naturalization districts named pertaining to the number of Asiatics who

were naturalized under the provisions of the Acts of May 9, 1918, and July 19, 1919, based on the data transmitted with your communication:

Boston	23
Denver	4
Pittsburg	1

The number shown above for the Boston naturalization district does not include the case of Leong Fee Fong, a native of China, which you state the result of your investigation shows is still pending in the United States District Court of your city. As indicated, the revised number for the Denver naturalization district is 4. This is an increase of one over the number shown in my communication of Nov. 21, 1923, for that district. The Pittsburg naturalization district includes Buffalo, N. Y. For this reason, the case of Hassen Sha, who appears to be an Afghan and not a Turk, is included in the district next above referred to. As no specific information was furnished for the native of China whose case you include in the Western District of New York, Buffalo, it was not possible for this office to locate its record of that case. All the other cases to which you make reference have been included and accounted for either in the figures furnished last November or the revised figures shown above.

Very truly yours,

T. B. SHOEMAKER,
Deputy Commissioner of Naturalization.

INDEX OF PROVISIONS OF NATURALIZATION LAWS PERTINENT TO CASE.

U. S. DEPARTMENT OF LABOR
JAMES J. DAVIS, Secretary
BUREAU OF NATURALIZATION

NATURALIZATION LAWS AND REGULATIONS

▼

JUNE 15, 1924

This edition supersedes all previous editions

WASHINGTON
GOVERNMENT PRINTING OFFICE
1924

U. S. DEPARTMENT OF LABOR

JAMES J. DAVIS, Secretary

BUREAU OF NATURALIZATION

NATURALIZATION LAWS AND REGULATIONS

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NATURALIZATION LAWS AND REGULATIONS

NATURALIZATION LAWS

Act of June 29, 1906 (34 Stat. L., Part 1, p. 596), as amended in sections 16, 17, and 18 by the act of Congress approved March 4, 1909[1] (35 Stat. L., Part 1, p. 1088); in section 18 by the act of Congress approved June 25, 1910[2] (36 Stat. L., Part 1, p. 830); by the act of Congress approved March 4, 1913[3] (37 Stat. L., Part 1, p. 736), creating the Department of Labor; and by the act of Congress approved May 9, 1918[4] (40 Stat. L., Part 1, p. 542)

An Act to provide for a uniform rule for the naturalization of aliens throughout the United States, and establishing the Bureau of Naturalization

[Portion of act creating the Department of Labor]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby created an executive department in the Government to be called the Department of Labor, with a Secretary of Labor, who shall be the head thereof, to be appointed by the President, by and with the advice and consent of the Senate; * * *

* * * * * * * * *

SEC. 8. That the following-named officers, bureaus, divisions, and branches of the public service now and heretofore under the jurisdiction of the Department of Commerce and Labor, and all that pertains to the same, known as * * * the Bureau of Immigration and Naturalization, * * * the Division of Naturalization, * * * be, and the same hereby are, transferred from the Department of Commerce and Labor to the Department of Labor, and the same shall hereafter remain under the jurisdiction and supervision of the last-named department. The Bureau of Immigration and Naturalization is hereby divided into two bureaus, to be known hereafter as the Bureau of Immigration and the Bureau of Naturalization, and the titles Chief Division of Naturalization and Assistant Chief shall be Commissioner of Naturalization and Deputy Commissioner of Naturalization. The Commissioner of Naturalization or, in his absence, the Deputy Commissioner of Naturalization, shall be the administrative officer in charge of the Bureau of Naturalization and of the administration of the naturalization laws under the immediate direction of the Secretary of Labor, to whom he shall report directly upon all naturalization matters annually and as otherwise required, * * *.

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[1] See pp. 26–28. [2] See p. 18. [3] See p. 3. [4] See p. 6.

[Act of June 29, 1906, as amended by the acts heretofore referred to]

That the Bureau of Naturalization, under the direction and control of the Secretary of Labor, shall have charge of all matters concerning the naturalization of aliens. That it shall be the duty of the Bureau of Immigration to provide, for use at the various immigration stations throughout the United States, books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this act of the name, age, occupation, personal description (including height, complexion, color of hair and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and, if entered through a port, the name of the vessel in which he comes. And it shall be the duty of said commissioners of immigration to cause to be granted to such alien a certificate of such registry, with the particulars thereof.

SEC. 2. [This section is omitted, as it authorized the Secretary of Commerce and Labor to provide the necessary offices in the city of Washington and take the necessary steps for the proper discharge of the duties imposed by the act of June 29, 1906.]

SEC. 3. That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit[1] and district courts now existing, or which may hereafter be established by Congress[2] in any State, United States district courts for the Territories of Arizona,[3] New Mexico,[3] Oklahoma,[3] Hawaii, and Alaska, the supreme court of the District of Columbia, and the United States courts for the Indian Territory;[3] also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

That the naturalization jurisdiction of all courts herein specified—State, Territorial, and Federal—shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the Bureau of Naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said bureau.

SEC. 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First: He shall declare on oath before the clerk of any court authorized by this act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States and to renounce forever all allegiance and fidelity to any foreign

[1] United States circuit courts abolished December 31, 1911, by act of Congress approved March 3, 1911 (36 Stat. L., part 1, p. 1167).
[2] Establishment of United States district court for Porto Rico. See p. 23.
[3] United States Territorial courts abolished by acts of Congress conferring statehood.

rince, potentate, state, or sovereignty, and particularly, by name, to ie prince, potentate, state, or sovereignty of which the alien may be t the time a citizen or subject. And such declaration shall set forth he name, age, occupation, personal description, place of birth, last oreign residence and allegiance, the date of arrival, the name of the essel, if any, in which he came to the United States, and the present lace of residence in the United States of said alien: *Provided, however*, That no alien who, in conformity with the law in force at the ate of his declaration, has declared his intention to become a citizen f the United States shall be required to renew such declaration.[1]

Second. Not less than two years nor more than seven years after ie has made such declaration of intention he shall make and file, in luplicate, a petition in writing, signed by the applicant in his own iandwriting and duly verified, in which petition such applicant shall tate his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided*, That if he has filed his declaration before the passage of this act he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the State, Territory, or the District of Columbia,[2] in which the application is made for a period of at least one year immediately preceding the date of the filing

[1] See U. S. v. Morena, 245 U. S. 392.
[2] The word "District" amended by the act of May 9, 1918, to read "the District of Columbia."

of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Labor, if the petitioner arrives in the United States after the passage of this act, stating the date, place, and manner of his arrival in the United States,[1] and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien may, by complying with the other provisions of this act, be naturalized without making any declaration of intention.

[2] Seventh. Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be

[1] See U. S. v. Ness, 245 U. S. 319, holding that the filing of a certificate of arrival as provided in section 4 of the act of June 29, 1906, is an essential prerequisite to a valid order of naturalization.

[2] Section four of the act entitled "An act to establish a Bureau of Immigration and Naturalization and to provide a uniform rule for the naturalization of aliens throughout the United States," approved June twenty-ninth, nineteen hundred and six, was amended by the act of May 9, 1918 (40 Stat. L., Part 1, p. 542), by adding seven new subdivisions

honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for reenlistment; or any alien, or any Porto Rican not a citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States, either the Regular or the Volunteer Forces, or the National Army, the National Guard or Naval Militia of any State, Territory, or the District of Columbia, or the State militia in Federal service, or in the United States Navy or Marine Corps, or in the United States Coast Guard, or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom, or while on furlough to the Army Reserve or Regular Army Reserve after honorable service, may, on presentation of the required declaration of intention petition for naturalization without proof of the required five years' residence within the United States if upon examination by the representative of the Bureau of Naturalization, in accordance with the requirements of this subdivision it is shown that such residence can not be established; any alien serving in the military or naval service of the United States during the time this country is engaged in the present war may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States; any alien declarant who has served in the United States Army or Navy, or the Philippine Constabulary, and has been honorably discharged therefrom, and has been accepted for service in either the military or naval service of the United States on the condition that he becomes a citizen of the United States, may file his petition for naturalization upon proof of continuous residence within the United States for the three years immediately preceding his petition, by two witnesses, citizens of the United States, and in these cases only residence in the Philippine Islands and the Panama Canal Zone by aliens may be considered residence within the United States, and the place of such military service shall be construed as the place of residence required to be established for purposes of naturalization; and any alien, or any person owing permanent allegiance to the United States embraced within this subdivision, may file his petition for naturalization in the most convenient court without proof of residence within its jurisdiction, notwithstanding the limitation upon the jurisdiction of the courts specified in section three of the act of June twenty-ninth, nineteen hundred and six, provided he appears with his two witnesses before the appropriate representative of the Bureau of Naturalization and passes the preliminary examination hereby required before filing his petition for naturalization in the office of the clerk of the court, and in each case the record of this examination shall be offered in evidence by the representative of the Government from the Bureau of Naturalization and made a part of the record at the original and any subsequent hearings; and, except as otherwise herein provided, the honorable discharge certificate of such alien, or person owing permanent allegiance to the United States, or the certificate of service showing good conduct, signed by a duly authorized officer, or by the

masters of said vessels, shall be deemed prima facie evidence to satisfy all of the requirements of residence within the United States and within the State, Territory, or the District of Columbia, and good moral character required by law, when supported by the affidavits of two witnesses, citizens of the United States, identifying the applicant as the person named in the certificate or honorable discharge, and in those cases only where the alien is actually in the military or naval service of the United States, the certificate of arrival shall not be filed with the petition for naturalization in the manner prescribed; and any petition for naturalization filed under the provisions of this subdivision may be heard immediately, notwithstanding the law prohibits the hearing of a petition for naturalization during thirty days preceding any election in the jurisdiction of the court. Any alien who, at the time of the passage of this act, is in the military service of the United States, who may not be within the jurisdiction of any court authorized to naturalize aliens, may file his petition for naturalization without appearing in person in the office of the clerk of the court and shall not be required to take the prescribed oath of allegiance in open court. The petition shall be verified by the affidavits of at least two credible witnesses who are citizens of the United States, and who shall prove in their affidavits the portion of the residence that they have personally known the applicant to have resided within the United States. The time of military service may be established by the affidavits of at least two other citizens of the United States, which together with the oath of allegiance, may be taken in accordance with the terms of section seventeen hundred and fifty of the Revised Statutes of the United States after notice from and under regulations of the Bureau of Naturalization. Such affidavits and oath of allegiance shall be admitted in evidence in any original or appellate naturalization proceeding without proof of the genuineness of the seal or signature or of the official character of the officer before whom the affidavits and oath of allegiance were taken, and shall be filed by the representative of the Government from the Bureau of Naturalization at the hearing as provided by section eleven of the act of June twenty-ninth, nineteen hundred and six. Members of the Naturalization Bureau and Service may be designated by the Secretary of Labor to administer oaths relating to the administration of the naturalization law; and the requirement of section ten of notice to take depositions to the United States attorneys is repealed, and the duty they perform under section fifteen of the act of June twenty-ninth, nineteen hundred and six (Thirty-fourth Statutes at Large, part one, page five hundred and ninety-six), may also be performed by the Commissioner or Deputy Commissioner of Naturalization: *Provided*, That it shall not be lawful to make a declaration of intention before the clerk of any court on election day or during the period of thirty days preceding the day of holding any election in the jurisdiction of the court: *Provided further*, That service by aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens can not secure residence for naturalization purposes during service upon vessels of foreign registry.

During the time when the United States is at war no clerk of a United States court shall charge or collect a naturalization fee from an alien in the military service of the United States for filing his petition or issuing the certificate of naturalization upon admission to citizenship, and no clerk of any State court shall charge or collect any fee for this service unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A full accounting for all of these transactions shall be made to the Bureau of Naturalization in the manner provided by section thirteen of the act of June twenty-ninth, nineteen hundred and six.

Eighth. That every seaman, being an alien, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served three years upon such merchant or fishing vessels of the United States, be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen: *Provided*, That nothing contained in this act shall be taken or construed to repeal or modify any portion of the act approved March fourth, nineteen hundred and fifteen (Thirty-eighth Statutes at Large, part one, page eleven hundred and sixty-four, chapter one hundred and fifty-three), being an act to promote the welfare of American seamen.

Ninth. That for the purpose of carrying on the work of the Bureau of Naturalization of sending the names of the candidates for citizenship to the public schools and otherwise promoting instruction and training in citizenship responsibilities of applicants for naturalization, as provided in this subdivision, authority is hereby given for the reimbursement of the printing and binding appropriation of the Department of Labor upon the records of the Treasury Department from the naturalization fees deposited in the Treasury through the Bureau of Naturalization for the cost of publishing the citizenship textbook prepared and to be distributed by the Bureau of Naturalization to those candidates for citizenship only who are in attendance upon the public schools, such reimbursement to be made upon statements by the Commissioner of Naturalization of books actually delivered to such student candidates for citizenship, and a monthly naturalization bulletin, and in this duty to secure the aid of and cooperate with the official State and national organizations, including those concerned with vocational education and including personal services in the District of Columbia, and to aid the local Army exemption boards and cooperate with the War Department in locating declarants subject to the Army draft and expenses incidental thereto.

Tenth. That any person not an alien enemy, who resided uninterruptedly within the United States during the period of five years next preceding July first, nineteen hundred and fourteen, and was on that date otherwise qualified to become a citizen of the United States, except that he had not made the declaration of intention required by law, and who during or prior to that time, because of misinformation regarding his citizenship status, erroneously exercised the rights and performed the duties of a citizen of the United States in good faith,

may file the petition for naturalization prescribed by law without making the preliminary declaration of intention required of other aliens, and upon satisfactory proof to the court that he has so acted may be admitted as a citizen of the United States upon complying in all respects with the other requirements of the naturalization law.

Eleventh. No alien who is a native, citizen, subject, or denizen of any country, State, or sovereignty with which the United States is at war shall be admitted to become a citizen of the United States unless he made his declaration of intention not less than two nor more than seven years prior to the existence of the state of war, or was at that time entitled to become a citizen of the United States, without making a declaration of intention, or unless his petition for naturalization shall then be pending and is otherwise entitled to admission, notwithstanding he shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that subject: *Provided*, That no alien embraced within this subdivision shall have his petition for naturalization called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Commissioner or Deputy Commissioner of Naturalization to be present, and the petition shall be given no final hearing except in open court and after such notice to the representative of the Government from the Bureau of Naturalization, whose objection shall cause the petition to be continued from time to time for so long as the Government may require: *Provided, however*, That nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien; and section twenty-one hundred and seventy-one of the Revised Statutes of the United States is hereby repealed: *Provided further*, That the President of the United States may, in his discretion, upon investigation and report by the Department of Justice fully establishing the loyalty of any alien enemy not included in the foregoing exemption, except such alien enemy from the classification of alien enemy, and thereupon he shall have the privilege of applying for naturalization; and for the purposes of carrying into effect the provisions of this section, including personal services in the District of Columbia, the sum of $400,000 is hereby appropriated, to be available until June thirtieth, nineteen hundred and nineteen, including travel expenses for members of the Bureau of Naturalization and its field service only, and the provisions of section thirty-six hundred and seventy-nine of the Revised Statutes shall not be applicable in any way to this appropriation.

Twelfth. That any person who, while a citizen of the United States and during the existing war in Europe, entered the military or naval service of any country at war with a country with which the United States is now at war, who shall be deemed to have lost his citizenship by reason of any oath or obligation taken by him for the purpose of entering such service, may resume his citizenship by taking the oath of allegiance to the United States prescribed by the naturalization law and regulations, and such oath may be taken before any court of the United States or of any State authorized by law to naturalize aliens or before any consul of the United States, and certified copies thereof shall be sent by such court or consul to the Department of State and the Bureau of Naturalization, and the act

lic fifty-five, Sixty-fifth Congress, approved October fifth, nine-
undred and seventeen), is hereby repealed.
irteenth. That any person who is serving in the military or naval
s of the United States at the termination of the existing war,
ny person who before the termination of the existing war may
been honorably discharged from the military or naval services
e United States on account of disability incurred in line of duty,
if he applies to the proper court for admission as a citizen of
United States, be relieved from the necessity of proving that
diately preceding the date of his application he has resided
nuously within the United States the time required by law of
aliens, or within the State, Territory, or the District of Colum-
or the year immediately preceding the date of his petition for
ralization, but his petition for naturalization shall be supported
he affidavits of two credible witnesses, citizens of the United
es, identifying the petitioner as the person named in the certifi-
of honorable discharge, which said certificate may be accepted
idence of good moral character required by law, and he shall
ply with the other requirements of the naturalization law.
EC. 5. That the clerk of the court shall, immediately after filing
petition, give notice thereof by posting in a public and conspicu-
place in his office, or in the building in which his office is situated,
er an appropriate heading, the name, nativity, and residence of
alien, the date and place of his arrival in the United States, and
date, as nearly as may be, for the final hearing of his petition, and
names of the witnesses whom the applicant expects to summon
is behalf; and the clerk shall, if the applicant requests it, issue a
pœna for the witnesses so named by the said applicant to appear
n the day set for the final hearing, but in case such witnesses
not be produced upon the final hearing other witnesses may be
moned.
EC. 6. That petitions for naturalization may be made and filed
ing term time or vacation of the court and shall be docketed the
e day as filed, but final action thereon shall be had only on stated
s, to be fixed by rule of the court, and in no case shall final action
had upon a petition until at least ninety days have elapsed after
g and posting the notice of such petition: *Provided*, That no per-
shall be naturalized nor shall any certificate of naturalization be
ed by any court within thirty days preceding the holding of any
eral election within its territorial jurisdiction. It shall be lawful
the time and as a part of the naturalization of any alien, for the
rt, in its discretion, upon the petition of such alien, to make a
ree changing the name of said alien, and his certificate of naturali-
ion shall be issued to him in accordance therewith.
EC. 7. That no person who disbelieves in or who is opposed to
anized government, or who is a member of or affiliated with any
anization entertaining and teaching such disbelief in or opposition
organized government, or who advocates or teaches the duty,
essity, or propriety of the unlawful assaulting or killing of any
cer or officers, either of specific individuals or of officers generally,
the Government of the United States, or of any other organized
vernment, because of his or their official character, or who is a
lygamist, shall be naturalized or be made a citizen of the United
ates.

SEC. 8. That no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language: *Provided*, That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States: *And provided further*, That the requirements of this section shall not apply to any alien who has prior to the passage of this act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration: *Provided further*, That the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands.

SEC. 9. That every final hearing upon such petition shall be had in open court[1] before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court.

SEC. 10. That in case the petitioner has not resided in the State, Territory, or the District of Columbia[2] for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the State, provided that it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Naturalization.

SEC. 11. That the United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

SEC. 12. That it is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters under the provisions of this act to keep and file a duplicate of each declaration of intention made before him and to send to the Bureau of Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essential facts set forth in such certificate. It shall also be the duty of the clerk of each of said courts to report to the said bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who shall be denied naturalization, and to

[1] See U. S. v. Solomon Louis Ginsberg, 243 U. S. 472, April 9, 1917, holding that under section 9 of the act of June 29, 1906, a hearing in the judge's chambers adjoining the court room is not a compliance with the section.

[2] The word "District" amended by the act of May 9, 1918, to read "the District of Columbia."

furnish to said bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said bureau.

In case any such clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions he shall forfeit and pay to the United States the sum of twenty-five dollars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk.

Clerks of courts having and exercising jurisdiction in naturalization matters shall be responsible for all blank certificates of citizenship received by them from time to time from the Bureau of Naturalization, and shall account for the same to the said bureau whenever required so to do by such bureau. No certificate of citizenship received by any such clerk which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificate shall be returned to the said bureau; and in case any such clerk shall fail to return or properly account for any certificate furnished by the said bureau, as herein provided, he shall be liable to the United States in the sum of fifty dollars, to be recovered in an action of debt, for each and every certificate not properly accounted for or returned.

SEC. 13.[1] That the clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:

For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars.

The clerk of any court collecting such fees is hereby authorized to retain one-half of the fees collected by him in such naturalization proceeding; the remaining one-half of the naturalization fees in each case collected by such clerks, respectively, shall be accounted for in their quarterly accounts, which they are hereby required to render the Bureau of Naturalization, and paid over to such bureau within thirty days from the close of each quarter in each and every fiscal year, and the moneys so received shall be paid over to the disbursing clerk of the Department of Labor, who shall thereupon deposit them in the Treasury of the United States, rendering an account therefor quarterly to the Auditor for the State and Other Departments, and the said disbursing clerk shall be held responsible under his bond for said fees so received.

In addition to the fees herein required, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with and pay to the clerk of the court a sum of money sufficient to cover the expenses of subpœnaing and paying the legal fees of any witnesses for whom he may request a subpœna, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the customary and usual witness fees from

[1] Sec. 13 as amended by act of June 25, 1910.

the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the petitioner: *Provided*, That the clerks of courts exercising jurisdiction in naturalization proceedings shall be permitted to retain one-half of the fees in any fiscal year up to the sum of three thousand dollars, and that all fees received by such clerks in naturalization proceedings in excess of such amount shall be accounted for and paid over to said bureau as in case of other fees to which the United States may be entitled under the provisions of this act. The clerks of the various courts exercising jurisdiction in naturalization proceedings shall pay all additional clerical force that may be required in performing the duties imposed by this act upon the clerks of courts from fees received by such clerks in naturalization proceedings.

And in case the clerk of any court exercising naturalization jurisdiction collects fees in excess of the sum of six thousand dollars in any fiscal year the Secretary of Labor may allow salaries, for naturalization purposes only, to pay for clerical assistance, to be selected and employed by that clerk, additional to the clerical force, for which clerks of courts are required by this section to pay from fees received by such clerks in naturalization proceedings, if in the opinion of said Secretary the naturalization business of such clerk warrants further additional assistance: *Provided*, That in no event shall the whole amount allowed the clerk of a court and his assistants exceed the one-half of the gross receipts of the office of said clerk from naturalization fees during such fiscal year: *Provided further*, That when, at the close of any fiscal year, the business of such clerk of court indicates, in the opinion of the Secretary of Labor, that the naturalization fees for the succeeding fiscal year will exceed six thousand dollars the Secretary of Labor may authorize the continuance of the allowance of salaries for the additional clerical assistance herein provided for and employed on the last day of the fiscal year until such time as the remittances indicate, in the opinion of said Secretary, that the fees for the then current fiscal year will not be sufficient to allow the additional clerical assistance authorized by this act.

That payment for the additional clerical assistance herein authorized shall be in the manner and under such regulations as the Secretary of Labor may prescribe.

SEC. 14. That the declarations of intention and the petitions for naturalization shall be bound in chronological order in separate volumes, indexed, consecutively numbered, and made part of the records of the court. Each certificate of naturalization issued shall bear upon its face, in a place prepared therefor, the volume number and page number of the petition whereon such certificate was issued, and the volume number and page number of the stub of such certificate.

SEC. 15.[1] That it shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction

[1] See Johannessen *v.* U. S., 225 U. S., canceling a certificate issued through fraud prior to the passage of the act; also Luria *v.* U. S., 231 U. S. 9, canceling a certificate issued in July, 1894, where the applicant one month after his naturalization left the United States and proceeded to South Africa; and U. S. *v.* Ness, 245 U. S. 319, holding that where a certificate of arrival had not been obtained and filed as required by law the certificate of naturalization was illegally procured within the meaning of section 15 of the act of June 29, 1906.

to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

If any alien who shall have secured a certificate of citizenship under the provisions of this act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set aside or canceled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the Bureau of Naturalization; and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the Bureau of Naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

SEC. 16. [Superseded by act of Mar. 4, 1909. See sec. 74, p. 26.]

SEC. 17. [Superseded by act of Mar. 4, 1909. See sec. 75, p. 27.]

SEC. 18. That it is hereby made a felony for any clerk or other person to issue or be a party to the issuance of a certificate of citi-

zenship contrary to the provisions of this act, except upon a final order under the hand of a court having jurisdiction to make such order, and upon conviction thereof such clerk or other person shall be punished by imprisonment for not more than five years and by a fine of not more than five thousand dollars, in the discretion of the court.

SEC. 19. [Superseded by act of Mar. 4, 1909. See sec. 77, p. 27.]

SEC. 20. That any clerk or other officer of a court having power under this act to naturalize aliens, who willfully neglects to render true accounts of moneys received by him for naturalization proceedings or who willfully neglects to pay over any balance of such moneys due to the United States within thirty days after said payment shall become due and demand therefor has been made and refused, shall be deemed guilty of embezzlement of the public moneys, and shall be punishable by imprisonment for not more than five years, or by a fine of not more than five thousand dollars, or both.

SEC. 21. That it shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified; and a violation of any of the provisions of this section or any part thereof is hereby declared to be a misdemeanor and shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment.

SEC. 22. That the clerk of any court exercising jurisdiction in naturalization proceedings, or any person acting under authority of this act, who shall knowingly certify that a petitioner, affiant, or witness named in an affidavit, petition, or certificate of citizenship, or other paper or writing required to be executed under the provisions of this act, personally appeared before him and was sworn thereto, or acknowledged the execution thereof or signed the same, when in fact such petitioner, affiant, or witness did not personally appear before him, or was not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not to exceed five years.

SEC. 23. That any person who knowingly procures naturalization in violation of the provisions of this act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

SEC. 24. That no person shall be prosecuted, tried, or punished for any crime arising under the provisions of this act unless the indictment is found or the information is filed within five years next after the commission of such crime.

SEC. 25. That for the purpose of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to the date when this act shall go into effect, the existing naturalization laws shall remain in full force and effect.

SEC. 26. That sections twenty-one hundred and sixty-five, twenty-one hundred and sixty-seven, twenty-one hundred and sixty-eight, twenty-one hundred and seventy-three of the Revised Statutes of the Unted States of America, and section thirty-nine of chapter one thousand and twelve of the Statutes at Large of the United States of America for the year nineteen hundred and three, and all acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed.

SEC. 27. That substantially the following forms shall be used in the proceedings to which they relate:

DECLARATION OF INTENTION

(Invalid for all purposes seven years after the date hereof.)

_____ _____, ss:

I, _____ _____, aged_____ years, occupation_____, do declare on oath (affirm) that my personal description is: Color_____, complexion _____, height _____, weight _____, color of hair _____, color of eyes _____, other visible distinctive marks _____; I was born in _____, on the _____ day of _____, anno Domini _____; I now reside at _____; I emigrated to the United States of America from _____, on the vessel _____; my last foreign residence was _____. It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to _____, of which I am now a citizen (subject); I arrived at the (port) of _____, in the State (Territory or the District of Columbia [1]) of _____, on or about the _____ day of _____, anno Domini _____; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein. So help me God.

(Original signature of declarant) _____ _____.

Subscribed and sworn to (affirmed) before me this _____ day of _____, anno Domini _____.

[L. S.] _____ _____,

(Official character of attestor.)

[1] The word "District" amended by the act of May 9, 1918, to read "the District of Columbia."

PETITION FOR NATURALIZATION

_____ Court of _____.

In the matter of the petition of _____ to be admitted as a citizen of the United States of America.

To the _____ Court:

The petition of _____ _____ respectfully shows:

First. My full name is _____.

Second. My place of residence is number _____ street, city of _____, State (Territory or the District of Columbia [1]) of _____.

Third. My occupation is _____.

Fourth. I was born on the _____ day of _____ at _____.

Fifth. I emigrated to the United States from _____, on or about the _____ day of _____, anno Domini _____, and arrived at the port of _____, in the United States, on the vessel _____.

Sixth. I declared my intention to become a citizen of the United States on the _____ day of _____, at _____, in the _____ court of _____.

Seventh. I am __ married. My wife's name is _____ _____. She was born in _____ and now resides at _____. I have _____ children, and the name, date, and place of birth and place of residence of each of said children is as follows: _____ _____; _____ _____; _____ _____.

Eighth. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to _____, of which at this time I am a citizen (or subject), and it is my intention to reside permanently in the United States.

Ninth. I am able to speak the English language.

Tenth. I have resided continuously in the United States of America for a term of five years at least immediately preceding the date of this petition, to wit, since _____, anno Domini _____ and in the State (Territory or the District of Columbia [1]) of _____ for one year at least next preceding the date of this petition, to wit, since _____ day of _____, anno Domini _____.

Eleventh. I have not heretofore made petition for citizenship to any court. (I made petition for citizenship to the _____ court of _____ at _____, and the said petition was denied by the said court for the following reasons and causes, to wit, _____, and the cause of such denial has since been cured or removed.)

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the

[1] The word "District" amended by the act of May 9, 1918, to read "the District of Columbia."

certificate from the Department of Labor required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

Dated _____.

(Signature of petitioner) _____ _____.

_____ _____, ss:

_____ _____, being duly sworn, deposes and says that he is the petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this _____ day of _____, anno Domini _____.

[L. S.] _____ _____,
Clerk of the _____ Court.

AFFIDAVIT OF WITNESSES

_____ Court of _____

In the matter of the petition of _____ _____ to be admitted a citizen of the United States of America.

_____ _____, ss:

_____ _____, occupation _____, residing at _____, and _____ _____, occupation _____, residing at _____, each being severally, duly, and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known _____ _____, the petitioner above mentioned, to be a resident of the United States for a period of at least five years continuously immediately preceding the date of filing his petition, and of the State (Territory or the District of Columbia [1]) in which the above-entitled application is made for a period of _____ years immediately preceding the date of filing his petition; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that he is in every way qualified, in his opinion, to be admitted as a citizen of the United States.

_____ _____.
_____ _____.

Subscribed and sworn to before me this _____ day of _____, nineteen hundred and _____.

[L. S.] _____ _____,
(Official character of attestor.)

[1] The word "District" amended by the act of May 9, 1918, to read "the District of Columbia."

CERTIFICATE OF NATURALIZATION

Number ______.
Petition, volume ______, page ______
Stub, volume ______, page ______
(Signature of holder) ______ ______.

Description of holder: Age, ______; height, ______; color, ______; complexion, ______; color of eyes, ______; color of hair, ______; visible distinguishing marks, ______. Name, age, and place of residence of wife, ______, ______, ______. Names, ages, and places of residence of minor children, ______, ______, ______; ______, ______, ______; ______, ______, ______.

______ ______, ss:

Be it remembered, that at a ______ term of the ______ court of ______, held at ______ on the ______ day of ______, in the year of our Lord nineteen hundred and ______, ______, who previous to his (her) naturalization was a citizen or subject of ______, at present residing at number ______ ______ street, ______ city (town), ______ State (Territory or the District of Columbia [1]), having applied to be admitted a citizen of the United States of America pursuant to law, and the court having found that the petitioner had resided continuously within the United States for at least five years and in this State for one year immediately preceding the date of the hearing of his (her) petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that __he was entitled to be so admitted, it was thereupon ordered by the said court that __he be admitted as a citizen of the United States of America.

In testimony whereof the seal of said court is hereunto affixed on the ______ day of ______, in the year of our Lord nineteen hundred and ______ and of our independence the ______.

[L. S.] ______ ______,
(Official character of attestor.)

STUB OF CERTIFICATE OF NATURALIZATION

No. of certificate, ______.
Name, ______ ______; age, ______.
Declaration of intention, volume ______, page ______.
Petition, volume ______, page ______.
Name, age, and place of residence of wife, ____, ____, ____. Names, ages, and places of residence of minor children, ____, ____, ____, ____, ____, ____, ____, ____, ____, ____, ____, ____, ____, ____, ____, ____.
____
____
Date of order, volume ______, page ______.
(Signature of holder) ______ ______.

[1] The word "District" amended by the act of May 9, 1918, to read "the District of Columbia."

SEC. 28. That the Secretary of Labor shall have power to make ich rules and regulations as may be necessary for properly carrying ito execution the various provisions of this act. Certified copies f all papers, documents, certificates, and records required to be used, led, recorded, or kept under any and all of the provisions of this ct shall be admitted in evidence equally with the originals in any nd all proceedings under this act and in all cases in which the riginals thereof might be admissible as evidence.

SEC. 29. That for the purpose of carrying into effect the provi- ions of this act there is hereby appropriated the sum of one undred thousand dollars, out of any moneys in the Treasury of he United States not otherwise appropriated, which appropriation hall be in full for the objects hereby expressed until June thirtieth, ineteen hundred and seven; and the provisions of section thirty-six undred and seventy-nine of the Revised Statutes of the United tates shall not be applicable in any way to this appropriation.

SEC. 30. That all the applicable provisions of the naturalization aws of the United States shall apply to and be held to authorize the dmission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any State or organized Territory of the United States, vith the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall nake his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within he jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within he meaning of the five years' residence clause of the existing law.

SEC. 31. That this act shall take effect and be in force from and fter ninety days from the date of its passage: *Provided*, That sections one, two, twenty-eight, and twenty-nine shall go into effect rom and after the passage of this act.

Approved, June 29, 1906.

NATURALIZATION

[For a list of sections repealed see p. 17 of this pamphlet, sec. 26 of act of June 29, 1906; subdivisions 11th and 12th, under sec. 4, p. 10; and p. 28]

NATURALIZATION LIMITED TO WHITE PERSONS AND THOSE OF THE AFRICAN RACE

[Act of February 18, 1875, amending act of July 14, 1870]

SEC. 2169.[1] The provisions of this title shall apply to aliens being free white persons; and to aliens of African nativity and to persons of African descent. (R. S. 1878, p. 380; 1 Comp. Stat. 1901, p. 1333.)

NATURALIZATION OF CHINESE PROHIBITED

[Act of May 6, 1882]

SEC. 14. That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed. (22 Stat. L., p. 61.)

[1] See Takao Ozawa v. U. S., 260 U. S. 178; Takuji Yamashita v. Hinkle, Secretary of State, 260 U. S. 199; U. S. v. Bhagat Singh Thind, 261 U. S. 204.

RESIDENCE WITHIN THE UNITED STATES REQUIRED FOR FIVE YEARS CONTINUOUSLY

[Act of March 3, 1813]

[The United States Circuit Court of Appeals has held that sec. 2170 was not repealed by the naturalization act of June 29, 1906. (See United States v. Redlich, 161 Fed. 469.)]

SEC. 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States. (R. S. 1878, p. 380; 1 Comp. Stat. 1901, p. 1333.)

NATURALIZATION OF ALIEN ENEMIES PROHIBITED

[Act of July 30, 1813, amending act of April 14, 1802]

SEC. 2171. R. S. 1878, p. 380; 1 Comp. Stat. 1901, p. 1334. This section repealed by the act of May 9, 1918 (40 Stat. L., pt. 1, subd. 11, p. 545). (See sec. 4, subdivision 11th, p. 10.)

ALIEN SEAMEN OF MERCHANT VESSELS

[Act of July 7, 1872]

SEC. 2174. R. S. 1878, p. 380; 1 Comp. Stat. 1901, p. 1334. This section repealed by the act of May 9, 1919 (40 Stat. L., pt. 1, p. 542). (See sec. 4, subdivisions 7th and 8th, pp. 6 and 9.)

NATURALIZATION OF DECLARANTS WHO HAVE SERVED IN THE NAVAL RESERVE FORCE IN TIME OF WAR

[Act of May 22, 1917]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, be, and the same is hereby, amended by adding after the proviso under the heading "Naval Reserve Force," which reads as follows: "*Provided*, That citizens of the insular possessions of the United States may enroll in the Naval Auxiliary Reserve," a further proviso as follows: *Provided further*, That such persons who are not citizens of the United States, but who have or shall have declared their intention to become citizens of the United States, and who are citizens of countries which are at peace with the United States, may enroll in the Naval Reserve Force subject to the condition that they may be discharged from such enrollment at any time within the discretion of the Secretary of the Navy, and such persons who may, under existing law, become citizens of the United States, and who render honorable service in the Naval Reserve Force in time of war for a period of not less than one year may become citizens of the United States without proof of residence on shore and without further requirement than proof of good moral character and certificate from the Secretary of the Navy that such honorable service was actually rendered. (40 Stat. L., pt. 1, p. 84.)

HONORABLY DISCHARGED SOLDIERS EXEMPT FROM CERTAIN FORMALITIES

[Act of July 17, 1862]

SEC. 2166. R. S. 1878, p. 379; 1 Comp. Stat. 1901, p. 1332. This section repealed by act of May 9, 1918 (40 Stat. L., pt. 1, p. 542), except as to honorably discharged soldier who served in U. S. Armies prior to January 1, 1900. (See subdivision 7th, p. 6; sec. 2, p. 28.)

ALIENS HONORABLY DISCHARGED FROM SERVICE IN NAVY OR MARINE CORPS

[Act of July 26, 1894 (28 Stat. L., p. 124). Repealed by act of May 9, 1918 (40 Stat. L., pt. 1, sec. 2, p. 542).]

(See subdivision 7th, p. 6; also p. 28.)

ALIENS HONORABLY DISCHARGED FROM SERVICE IN NAVY, MARINE CORPS, REVENUE-CUTTER SERVICE, OR NAVAL AUXILIARY SERVICE

[Act of June 30, 1914 (38 Stat. L., pt. 1, p. 393). Repealed by act of May 9, 1918 (40 Stat. L., pt. 1, sec. 2, p. 542).]

(See subdivision 7th, p. 6; also p. 28.)

ALIENS HONORABLY DISCHARGED FROM MILITARY OR NAVAL FORCES OF THE UNITED STATES AFTER SERVICE DURING THE PRESENT WAR

[Act of July 19, 1919]

* * * * * * *

Any person of foreign birth who served in the military or naval forces of the United States during the present war, after final examination and acceptance by the said military or naval authorities, and shall have been honorably discharged after such acceptance and service, shall have the benefits of the seventh subdivision of section 4, of the act of June 29, 1906, 34 Statutes at Large, part 1, page 596, as amended, and shall not be required to pay any fee therefor; and this provision shall continue for the period of one year after all of the American troops are returned to the United States. (41 Stat. L., pt. 1, 222.)

NOTE.—The official date for the return of all American troops was March 3, 1923, therefore the exemptions carried by this act expired on March 3, 1924.

ALIENS WHO ERRONEOUSLY BELIEVED THEMSELVES CITIZENS EXEMPT FROM CERTAIN FORMALITIES

[Act of June 25, 1910]

SEC. 3, 36 Stat. L., pt. 1, p. 830. This section repealed by act of May 9, 1918 (40 Stat. L., pt. 1, sec. 2, p. 547). (See subdivision 10th, p. 9; also p. 28.)

NATURALIZATION AND CITIZENSHIP OF MARRIED WOMEN

[Act of September 22, 1922]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of any woman to become a naturalized citizen of the United States shall not be denied or abridged because of her sex or because she is a married woman.

SEC. 2. That any woman who marries a citizen of the United States after the passage of this act, or any woman whose husband is

naturalized after the passage of this act, shall not become a citizen of the United States by reason of such marriage or naturalization; but, if eligible to citizenship, she may be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

(a) No declaration of intention shall be required;

(b) In lieu of the five-year period or residence within the United States and the one-year period of resjdence within the State or Territory where the naturalization court is held, she shall have resided continuously in the United States, Hawaii, Alaska, or Porto Rico for at least one year immediately preceding the filing of the petition.

SEC. 3. That a woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after the passage of this act, unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens: *Provided*, That any woman citizen who marries an alien ineligible to citizenship shall cease to be a citizen of the United States. If at the termination of the marital status she is a citizen of the United States she shall retain her citizenship regardless of her residence. If during the continuance of the marital status she resides continuously for two years in a foreign State of which her husband is a citizen or subject, or for five years continuously outside the United States, she shall thereafter be subject to the same presumption as is a naturalized citizen of the United States under the second paragraph of section 2 of the act entitled "An act in reference to the expatriation of citizens and their protection abroad," approved March 2, 1907. Nothing herein shall be construed to repeal or amend the provisions of Revised Statutes 1999 or of section 2 of the expatriation act of 1907 with reference to expatriation.

SEC. 4. That a woman who, before the passage of this act, has lost her United States citizenship by reason of her marriage to an alien eligible for citizenship, may be naturalized as provided by section 2 of this act: *Provided*, That no certificate of arrival shall be required to be filed with her petition if during the continuance of the marital status she shall have resided within the United States. After her naturalization she shall have the same citizenship status as if her marriage had taken place after the passage of this act.

SEC. 5. That no woman whose husband is not eligible to citizenship shall be naturalized during the continuance of the marital status.

SEC. 6. That section 1994 of the Revised Statutes and section 4 of the expatriation act of 1907 are repealed. Such repeal shall not terminate citizenship acquired or retained under either of such sections nor restore citizenship lost under section 4 of the expatriation act of 1907.

SEC. 7. That section 3 of the expatriation act of 1907 is repealed. Such repeal shall not restore citizenship lost under such section nor terminate citizenship resumed under such section. A woman who has resumed under such section citizenship lost by marriage shall, upon the passage of this act, have for all purposes the same citizenship status as immediately preceding her marriage. (42 Stat. L., pt. 1, p. 1021.)

PROVIDING FOR NATURALIZATION OF WIFE AND MINOR CHILDREN OF INSANE ALIENS MAKING HOMESTEAD ENTRIES UNDER LAND LAWS OF THE UNITED STATES

[Act of February 24, 1911]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when any alien, who has declared his intention to become a citizen of the United States, becomes insane before he is actually naturalized, and his wife shall thereafter make a homestead entry under the land laws of the United States, she and their minor children may, by complying with the other provisions of the naturalization laws, be naturalized without making any declaration of intention. (36 Stat. L., pt. 1, p. 929.)

NATURALIZATION OF DESERTERS OR PERSONS WHO GO ABROAD TO AVOID DRAFT PROHIBITED

[Act of August 22, 1912]

SEC. 3954. [Amending Sec. 1998, U. S. R. S.] Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section 1996 of the Revised Statutes: *Provided*, That the provisions of this section and said section 1996 [*infra*] shall not apply to any person hereafter deserting the military or naval service of the United States in time of peace * * *. (4 Comp. Stat. 1916, p. 4828.)

[Act of March 3, 1865]

SEC. 1996. All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost marshal within sixty days after the issuance of the proclamation by the President, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof. (R. S. 1878, p. 350; 1 Comp. Stat. 1901, p. 1269.)

DEBARRING FROM NATURALIZATION CERTAIN ALIENS WHO MAY WITHDRAW THEIR DECLARATIONS OF INTENTION TO AVOID MILITARY SERVICE

[Act of July 9, 1918]

* * * *Provided*, That a citizen or subject of a country neutral in the present war who has declared his intention to become a citizen of the United States shall be relieved from liability to military service upon his making a declaration, in accordance with such regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States, which shall operate and be held to cancel his declaration of intention to become an American citizen, and he shall forever be debarred from becoming a citizen of the United States. * * *. (40 Stat. L., pt. 1, p. 885.)

RELATING TO SECTION 10 OF THE ACT OF JUNE 29, 1906, AS AMENDED JUNE 25, 1910

[Act of June 12, 1917]

* * * *Provided*, That the whole amount allowed for a fiscal year to the clerk of a court and his assistants from naturalization fees and this appropriation or any similar appropriation made hereafter shall be based upon and not exceed the one-half of the gross receipts of said clerk from naturalization fees during the fiscal year immediately preceding, unless the naturalization business of the clerk of any court during the year shall be in excess of the naturalization business of the preceding year, in which event the amount allowed may be increased to an amount equal to one-half the estimated gross receipts of the said clerk from naturalization fees during the current fiscal year: * * * (40 Stat. L., pt. 1, p. 171.)

OFFICIAL MAIL TO BE FORWARDED BY CLERKS OF COURTS TO BUREAU FREE OF POSTAGE, AND BY REGISTERED MAIL IF NECESSARY

[Act of October 6, 1917]

* * * That all mail matter, of whatever class, relating to naturalization, including duplicate papers required by law or regulation to be sent to the Bureau of Naturalization by clerks of State or Federal courts, addressed to the Department of Labor, or the Bureau of Naturalization, or to any official thereof, and indorsed "Official Business," shall be transmitted free of postage, and by registered mail if necessary, and so marked: *Provided further*, That if any person shall make use of such indorsement to avoid payment of postage or registry fee on his or her private letter, package, or other matter in the mail, the person so offending shall be guilty of a misdemeanor and subject to a fine of $300, to be prosecuted in any court of competent jurisdiction.

* * * * * * *

(40 Stat. L. pt. 1, p. 376. Postal Laws and Regs., sec. 878, par. 3, and sec. 498, par. 2.)

VALIDATING CERTAIN CERTIFICATES OF NATURALIZATION WHERE DECLARATIONS WERE FILED PRIOR TO SEPTEMBER 27, 1906

[Act of May 9, 1918]

SEC. 3. That all certificates of naturalization granted by courts of competent jurisdiction prior to December thirty-first, nineteen hundred and eighteen, upon petitions for naturalization filed prior to January thirty-first, nineteen hundred and eighteen, upon declarations of intention filed prior to September twenty-seventh, nineteen hundred and six, are hereby declared to be valid in so far as the declaration of intention is concerned, but shall not be by this act further validated or legalized. (40 Stat. L., pt. 1, p. 548.)

AN ACT TO CODIFY, REVISE, AND AMEND THE PENAL LAWS OF THE UNITED STATES

[Act of March 4, 1909]

[The following sections repealed secs. 16, 17, and 19 of the act of June 29, 1906]

SEC. 74. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall knowingly aid or assist in falsely making, forging, or counterfeiting any

rtificate of citizenship with intent to use the same, or with the in-nt that the same may be used by some other person, shall be fined ot more than ten thousand dollars, or imprisoned not more than ten ars, or both.

SEC. 75. Whoever shall engrave, or cause or procure to be engraved, assist in engraving, any plate in the likeness of any plate designed r the printing of a certificate of citizenship; or whoever shall sell ny such plate, or shall bring into the United States from any foreign lace any such plate, except under the direction of the Secretary of abor or other proper officer; or whoever shall have in his control, stody, or possession any metallic plate engraved after the similitude f any plate from which any such certificate has been printed, with tent to use or to suffer such plate to be used in forging or counter-iting any such certificate or any part thereof; or whoever shall rint, photograph, or in any manner cause to be printed, photo-raphed, made, or executed any print or impression in the likeness of ny such certificate, or any part thereof; or whoever shall sell any uch certificate, or shall bring the same into the United States from ny foreign place, except by direction of some proper officer of the nited States; or whoever shall have in his possession a distinctive aper which has been adopted by the proper officer of the United tates for the printing of such certificate, with intent unlawfully to se the same, shall be fined not more than ten thousand dollars, or nprisoned not more than ten years, or both.

SEC. 76. Whoever, when applying to be admitted a citizen, or when ppearing as a witness for any such person, shall knowingly personate ny person other than himself, or shall falsely appear in the name of deceased person, or in an assumed or fictitious name; or whoever hall falsely make, forge, or counterfeit any oath, notice, affidavit, ertificate, order, record, signature, or other instrument, paper, or roceeding required or authorized by any law relating to or provid-ng for the naturalization of aliens; or whoever shall utter, sell, dis-ose of, or shall use as true or genuine, for any unlawful purpose, any alse, forged, antedated, or counterfeit oath, notice, certificate, order, ecord, signature, instrument, paper, or proceeding above specified; r whoever shall sell or dispose of to any person other than the per-on for whom it was originally issued any certificate of citizenship or ertificate showing any person to be admitted a citizen, shall be fined ot more than one thousand dollars, or imprisoned not more than five ears, or both.

SEC. 77. Whoever shall use or attempt to use, or shall aid, assist, r participate in the use of any certificate of citizenship, knowing the ame to be forged, counterfeit, or antedated, or knowing the same to ave been procured by fraud or otherwise unlawfully obtained; or whoever, without lawful excuse, shall knowingly possess any false, orged, antedated, or counterfeit certificate of citizenship purporting o have been issued under any law of the United States relating to aturalization, knowing such certificate to be false, forged, antedated, r counterfeit, with the intent unlawfully to use the same; or whoever hall obtain, accept, or receive any certificate of citizenship, knowing he same to have been procured by fraud or by the use or means of ny false name or statement given or made with the intent to procure, r to aid in procuring, the issuance of such certificate, or knowing he same to have been fraudulently altered or antedated; or whoever,

without lawful excuse, shall have in his possession any blank certificate of citizenship provided by the Bureau of Naturalization with the intent unlawfully to use the same; or whoever, after having been admitted to be a citizen, shall, on oath or by affidavit, knowingly deny that he has been so admitted, with the intent to evade or avoid any duty or liability imposed or required by law, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

SEC. 78. Whoever shall in any manner use, for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing any person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order, certificate, judgment, or exemplification has been unlawfully issued or made; or whoever shall unlawfully use, or attempt to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

SEC. 79. Whoever shall knowingly use any certificate of naturalization heretofore or which hereafter may be granted by any court, which has been or may be procured through fraud or by false evidence, or which has been or may hereafter be issued by the clerk or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; or whoever, for any fraudulent purpose whatever, shall falsely represent himself to be a citizen of the United States without having been duly admitted to citizenship, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

SEC. 80. Whoever, in any proceeding under or by virtue of any law relating to the naturalization of aliens, shall knowingly swear falsely in any case where an oath is made or affidavit taken, shall be fined not more than one thousand dollars and imprisoned not more than five years.

SEC. 81. The provisions of the five sections last preceding shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization may be commenced or attempted to be commenced, and whether such court was vested by law with jurisdiction in naturalization proceedings or not. (35 Stat. L., pt. 1, p. 1102.)

[By the terms of section 341 of the act referred to above the foregoing sections specifically repealed sections 5395, 5424, 5425, 5426, 5428, and 5429 of the Revised Statutes of the United States, as well as sections 16, 17, and 19 of the act of June 29, 1906, 34 Stat. L., pt. 1, p. 596.]

LAWS REPEALED BY THE ACT OF MAY 9, 1918

[40 Stat. L., pt. 1, p. 547]

SEC. 2. That the following provisions of law be, and they are hereby, repealed: Section twenty-one hundred and sixty-six and twenty-one hundred and seventy-four of the Revised Statutes of the United States of America and so much of an act approved July twenty-sixth, eighteen hundred and ninety-four, entitled "An act

naking provisions for the naval service for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," being chapter one hundred and sixty-five of the laws of eighteen hundred and ninety-four (Twenty-eighth Statutes at Large, page one hundred and twenty-four), reading as follows: "Any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States Navy or Marine Corps"; and so much of an act approved June thirtieth, nineteen hundred and fourteen, entitled "An act making appropriations for the Naval service for the fiscal year ending June thirtieth, nineteen hundred and fifteen, and for other purposes," being chapter one hundred and thirty of the laws of nineteen hundred and fourteen (Thirty-eighth Statutes at Large, part one, page three hundred and ninety-two), reading as follows: "Any alien of the age of twenty-one years and upward who may under existing law become a citizen of the United States, who has served or may hereafter serve for one enlistment of not less than four years in the United States Navy or Marine Corps, and who has received therefrom an honorable discharge or an ordinary discharge, with recommendation for reenlistment, or who has completed four years in the Revenue Cutter Service and received therefrom an honorable discharge or an ordinary discharge with recommendation for reenlistment, or who has completed four years of honorable service in the naval auxiliary service shall be admitted to become a citizen of the United States upon his petition without any previous declaration of his intention to become such, and without proof of residence on shore, and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof from naval or revenue-cutter sources of such service: *Provided*, That an honorable discharge from the Navy, Marine Corps, Revenue Cutter Service, or the Naval Auxiliary Service, or an ordinary discharge with recommendation for reenlistment, shall be accepted as proof of good moral character: *Provided further*, That any court which now has or may hereafter be given jurisdiction to naturalize aliens as citizens of the United States may immediately naturalize any alien applying under and furnishing the proof prescribed by the foregoing provisions"; and so much of section three of an act approved June twenty-fifth, nineteen hundred and ten (Thirty-fourth Statutes at Large, part one, page six hundred and thirty), reading as follows: "That paragraph two or section four of an act entitled 'An act to establish a Bureau of Immigration and Naturalization, and to provide a uniform rule for the naturalization of aliens throughout the United States,' approved June twenty-ninth, nineteen hundred and six, be amended by adding, after the proviso in paragraph two of section four of said act, the following: *Provided further*, That any person belonging to the class of persons

authorized and qualified under existing law to become a citizen of the United States, who has resided continually in the United States during a period of five years next preceding May first, nineteen hundred and ten, who, because of misinformation in regard to his citizenship or the requirements of the law governing the naturalization of citizens, has labored and acted under the impression that he was or could become a citizen of the United States and has in good faith exercised the rights or duties of a citizen or intended citizen of the United States because of such wrongful information and belief may, upon making a showing of such facts satisfactory to a court having jurisdiction to issue papers of naturalization to an alien, and the court in its judgment believes that such person has been for a period of more than five years entitled upon proper proceedings to be naturalized as a citizen of the United States, receive from the said court a final certificate of naturalization, and said court may issue such certificate without requiring proof of former declaration by or on part of such person of their intention to become a citizen of the United States, but such applicant for naturalization shall comply in all other respects with the law relative to the issuance of final papers of naturalization to aliens."

That all acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed; but nothing in this act shall repeal or in any way enlarge section twenty-one hundred and sixty-nine of the Revised Statutes, except as specified in the seventh subdivision of this act and under the limitation therein defined: *Provided*, That for the purposes of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to this act the statutes and laws hereby repealed shall remain in full force and effect: *Provided further*, That as to all aliens who, prior to January first, nineteen hundred, served in the Armies of the United States and were honorably discharged therefrom, section twenty-one hundred and sixty-six of the Revised Statutes of the United States shall be and remain in full force and effect, anything in this act to the contrary notwithstanding.

CITIZENSHIP

[In regard to the acquisition of citizenship by means other than naturalization, see also secs. 1993 and 1996 of the United States Revised Statutes.]

CITIZENSHIP BY BIRTH

SEC. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. * * * (Constitution, Art. XIV.)

CITIZENSHIP OF CHILDREN BORN ABROAD OF CITIZENS

[Act of February 10, 1855, amending act of April 14, 1802.]

SEC. 1993. All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States. (R. S. 1878, p. 350; 1 Comp. Stat. 1901, p. 1268.)

CITIZENSHIP OF WOMEN BY MARRIAGE

[Act of February 10, 1855]

SEC. 1994. R. S. 1878, p. 350; 1 Comp. Stat. 1901, p. 1268. This section repealed by the act of September 22, 1922 (42 Stat. L., pt. 1, sec. 6, p. 1022).

CHILDREN OF PERSONS NATURALIZED UNDER CERTAIN LAWS TO BE CITIZENS

[Act of April 14, 1802]

SEC. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject by the Government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary War, shall be admitted to become a citizen without the consent of the legislature of the State in which such person was proscribed. (R. S. 1878, p. 380; 1 Comp. Stat. 1901, p. 1384.)

EXPATRIATION OF CITIZENS AND THEIR PROTECTION ABROAD

[Act of March 2, 1907]

SECTION 1. [Repealed by 41 Stat. L., pt. 1, sec. 5, p. 751.]

SEC. 2. That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign State in conformity with its laws, or when he has taken an oath of allegiance to any foreign State.

When any naturalized citizen shall have resided for two years in the foreign State from which he came, or for five years in any other foreign State, it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years: *Provided, however*, That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe: *And provided also*, That no American citizen shall be allowed to expatriate himself when this country is at war.

SEC. 3. [Repealed by 42 Stat. L., pt. 1, sec. 7, p. 1022. (See p. 24.)]

SEC. 4. [Repealed by 42 Stat. L., pt. 1, sec. 6, p. 1022. (See p. 24.)]

SEC. 5. That a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent: *Provided*, That such naturalization or resumption takes place during the minority of such child: *And provided further*, That the citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States.

SEC. 6. That all children born outside the limits of the United States who are citizens thereof in accordance with the provisions of section nineteen hundred and ninety-three of the Revised Statutes of the United States and who continue to reside outside the United States shall, in order to receive the protection of this Government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States and shall be further required to take the oath of allegiance to the United States upon attaining their majority.

SEC. 7. That duplicates of any evidence, registration, or other acts required by this act shall be filed with the Department of State for record. (34 Stat. L., pt. 1, p. 1228.)

PORTO RICAN CITIZENSHIP

[Act of April 12, 1900]

SEC. 7. That all inhabitants continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the eleventh day of April, nineteen hundred, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the eleventh day of April, eighteen hundred and ninety-nine; * * *. (31 Stat L., 79.)

PORTO RICO: CITIZENSHIP, NATURALIZATION, AND RESIDENCE

[Act of March 2, 1917]

* * * * * * *

SEC. 5. That all citizens of Porto Rico, as defined by section seven of the act of April twelfth, nineteen hundred, "temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," and all natives of Porto Rico who were temporarily absent from that island on April eleventh, eighteen hundred and ninety-nine, and have since returned and are permanently residing in that island, and are not citizens of any foreign country, are hereby declared, and shall be deemed and held to be, citizens of the United States: *Provided*, That any person hereinbefore described may retain his present political status by making a declaration, under oath, of his decision to do so within six months of the taking effect of this act before the district court in the district in which he resides, the declaration to be in form as follows:

"I, ..., being duly sworn, hereby declare my intention not to become a citizen of the United States as provided in the act of Congress conferring United States citizenship upon citizens of Porto Rico and certain natives permanently residing in said island."

In the case of any such person who may be absent from the island during said six months the term of this proviso may be availed of by transmitting a declaration, under oath, in the from herein provided within six months of the taking effect of this act to the executive

secretary of Porto Rico: *And provided further*, That any person who is born in Porto Rico of an alien parent and is permanently residing in that island may, if of full age, within six months of the taking effect of this act, or if a minor, upon reaching his majority or within one year thereafter, make a sworn declaration of allegiance to the United States before the United States District Court for Porto Rico, setting forth therein all the facts connected with his or her birth and residence in Porto Rico and accompanying due proof thereof, and from and after the making of such declaration shall be considered to be a citizen of the United States.

* * * * * * *

SEC. 41. That Porto Rico shall constitute a judicial district to be called "the district of Porto Rico." * * * The district court for said district shall be called "the District Court of the United States for Porto Rico," * * * said district court shall have jurisdiction for the naturalization of aliens and Porto Ricans, and for this purpose residence in Porto Rico shall be counted in the same manner as residence elsewhere in the United States. * * * (39 Stat. L., 965.)

GRANTING CITIZENSHIP TO CERTAIN INDIANS

[Received by the President, Oct. 25, 1919; has become a law without his approval]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every American Indian who served in the Military or Naval Establishments of the United States during the war against the Imperial German Government, and who has received or who shall hereafter receive an honorable discharge, if not now a citizen and if he so desires, shall, on proof of such discharge and after proper identification before a court of competent jurisdiction, and without other examination except as prescribed by said court, be granted full citizenship with all the privileges pertaining thereto, without in any manner impairing or otherwise affecting the property rights, individual or tribal, of any such Indian or his interest in tribal or other Indian property. (41 Stat. L., pt. 1, p. 350.)

INDEX

CASES CITED

STATUTES CITED

In the Supreme Court of the United States

OCTOBER TERM, 1924

HIDEMITSU TOYOTA
v.
THE UNITED STATES OF AMERICA } No. 231

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF ON BEHALF OF THE UNITED STATES

STATEMENT OF THE CASE

This proceeding is in form a suit by the United States to cancel a certificate of naturalization previously granted to the appellant Toyota. The facts in the case are simple, and are set forth in the certificate. Toyota is a Japanese subject of Japanese race, born in Japan. He has served in the Coast Guard Service of the United States from 1913 until the present time, with a record which includes several honorable discharges, some of them being for service during the period of the war, when the Coast Guard formed a part of the naval forces. (Act of June 15, 1917, c. 29, 40 Stat. 182, 210, 212; Act of July 1, 1918, c. 114, 40 Stat. 704, 731.) He was naturalized by the United States District

Court for the District of Massachusetts on May 14, 1921. His certificate of naturalization was subsequently cancelled, at the suit of the United States, by the same Court which had granted it. The opinion of the District Court, on cancelling the certificate, is reported in 290 Fed. 971. From the order of cancellation Toyota appealed to the Circuit Court of Appeals for the First Circuit.

That Court has certified two questions of law, which may be paraphrased thus:

Can a person of the Japanese race, born in Japan, be naturalized, by virtue of service as a member of the armed or auxiliary forces of the United States, or as a seaman on an American ship, under either of the following statutes:

Question 1. The Act of June 29, 1906, c. 3592, s. 4, subdivision 7 (34 Stat. 596), as amended by the Act of May 9, 1918, c. 69 (40 Stat. 542)?

Question 2. The Act of July 19, 1919, c. 24 (41 Stat. 163, 222)?

STATUTES INVOLVED

Section 1 of the Naturalization Act of May 9, 1918, c, 69 (40 Stat. 542), added seven new subdivisions to Section 4 of the Naturalization Act of June 29, 1906, c. 3592 (34 Stat. 596). Of these, we are concerned only with the first part of Subdivision 7. This provides (40 Stat. 542):

> Seventh. Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of

the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for reenlistment; *or any alien,* or any Porto Rican not a citizen of the United States, *of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States,* either the Regular or the Volunteer Forces, or the National Army, the National Guard or Naval Militia of any State, Territory, or the District of Columbia, or the State militia in Federal service, *or in the United States Navy or Marine Corps, or in the United States Coast Guard,* or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom, or while on furlough to the Army Reserve or Regular Army Reserve after honorable service, may, on presentation of the required declaration of intention petition for naturalization without proof of the required five years' residence within the United States if upon examination by the representative of the Bureau of Naturalization, in accordance

with the requirements of this subdivision it is shown that such residence can not be established; *any alien serving in the Military or Naval Service of the United States during the time this country is engaged in the present war* may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States; * * *. [Italics ours.]

Section 2 of this same Act of May 9, 1918, c. 69, repealed several prior Naturalization Acts and several sections of Title XXX of the Revised Statutes, which is the title dealing with naturalization. Section 2 of this Act of 1918 then provides (40 Stat. 547):

> That all Acts or parts of Acts inconsistent with or repugnant to the provisions of this Act are hereby repealed; *but nothing in this Act shall repeal or in any way enlarge section twenty-one hundred and sixty-nine of the Revised Statutes, except as specified in the seventh subdivision of this Act and under the limitation therein defined* * * *. [Italics ours.]

This Act is hereafter referred to as the Act of 1918.

Section 2169 of the Revised Statutes is found in Title XXX, on Naturalization. It provides:

> The provisions of this Title shall apply to aliens *being free white persons, and to aliens* of African nativity and to persons of African descent. [Italics ours.]

The italicized words in R. S. 2169, it should be noted, were by inadvertence omitted from the original compilation of the Revised Statutes in 1873. They were restored in 1875 by the "Act to correct errors and to supply omissions in the Revised Statutes of the United States." Act of February 18, 1875, c. 80 (18 Stat. 316, 318). *Ozawa* v. *United States*, 260 U. S. 178, 195, cf. *In re Ah Yup* (C. C., D. California, 1878), 5 Sawy. 155.

The Sundry Civil Appropriation Act of July 19, 1919, c. 24 (41 Stat. 163, 222), under the heading "Naturalization Service," provides:

> *Any person of foreign birth who served in the military or naval forces of the United States during the present war,* after final examination and acceptance by the said military or naval authorities, and shall have been honorably discharged after such acceptance and service, shall have the benefits of the seventh subdivision of section 4 of the Act of June 29, 1906, Thirty-fourth Statutes at Large, part 1, page 596, as amended, and shall not be required to pay any fee therefor; and this provision shall continue for the period of one year after all of the American troops are returned to the United States. [Italics ours.]

This Act is hereafter referred to as the Act of 1919.

ARGUMENT

From an examination of the above enactments, it will be seen that this case involves a single point

of statutory construction, namely, the meaning to be given to the words "*any alien*" in the Act of 1918, and to the words "*any person of foreign birth*" in the Act of 1919. It is the contention of the appellant Toyota that these words should be construed to apply to all races and colors without distinction. On behalf of the United States, it is submitted that these words must be construed in the light of Section 2169 of the Revised Statutes, and that no alien, notwithstanding his military or naval service, can be naturalized unless he meets the racial tests therein laid down. If he is not a "free white person or an alien of African nativity" or "a person of African descent," he can not be naturalized; and a judgment admitting him to citizenship is void.

I

From the adoption of the Constitution until the year 1870 the right of naturalization was confined to "free white persons" only. This phrase appears again and again in the Naturalization Acts.

Act of March 26, 1790, c. 3, S. 1 (1 Stat. 103).

Act of January 29, 1795, c. 20, S. 1 (1 Stat. 414).

Act of April 14, 1802, c. 28, S. 1 (2 Stat. 153).

Act of March 26, 1804, c. 47, S. 1 (2 Stat. 292).

Act of March 22, 1816, c. 32, S. 2 (3 Stat. 258).

Act of May 26, 1824, c. 186, S. 1 (4 Stat. 69).

In 1870, as a result of the Civil War, it was enacted: "That the naturalization laws are hereby extended to aliens of African nativity and to per-

sons of African descent." Act of July 14, 1870, c. 254, s. 7 (16 Stat. 254, 256).

From 1873 to 1875, due to the mistake of the compilers of the Revised Statutes, no mention was made of " free white persons "; and it is possible that during this period, and this period only, persons of all races might have been naturalized. In 1875, however, Section 2169 of the Revised Statutes was corrected by the restoration of the phrase " free white persons," and in its corrected form it has remained unaltered until the present. Act of Feb. 18, 1875, c. 80 (18 Stat. 316, 318). There is therefore no room for doubt that Congress has deliberately followed for over a century and a quarter the policy of restricting naturalization to the members of two races only—the white and the African.

United States v. *Bhagat Singh Thind,* 261 U. S. 204.

In re Saito, 62 Feb. 126.

Moreover, this Court has recently held that a person of the Japanese race is not a " white person " within the meaning of the Naturalization Acts.

Ozawa v. *United States,* 260 U. S. 178.

Under the langauge of the statutes and the decision of this Court, and apart from the question of military or naval service, a Japanese can not therefore be naturalized; and a judgment purporting to naturalize him is void upon its face.

Yamashita v. *Hinkle,* 260 U. S. 199.

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II

But it is contended that these considerations do not apply in the case of persons who have served, or who are now serving, in the armed or auxiliary forces of the United States, and that such persons are eligible for naturalization without regard to race or color.

It is submitted that this contention can not be supported, in view of the language and history of the statutes. In the first place, it must be remembered that Section 2169 of the Revised Statutes expressly enacts that—

> "the provisions *of this Title* [Title XXX] shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent."

In Title XXX there is to be found a section (S. 2166) which provides for the speedy naturalization, under certain conditions, of "*any alien,* of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged."

This section 2166 was originally Section 21 of the Act of July 17, 1862, c. 200 (12 Stat. 597), which was the first statute passed to provide special facilities for naturalizing aliens serving under the flag; and so it may be regarded as in a sense the precursor of the Act of 1918.

R. S. 2166, it will be noted, speaks of "*any alien*" serving in the Army. Its language is in this respect similar to that of the Act of 1918. But the scope of R. S. 2166 was limited by R. S. 2169 to aliens of the white and African races only; and it was accordingly held that under R. S. 2166 a Japanese holding an honorable discharge from the United States Army was not eligible for citizenship.

In re Kumagai, 163 Fed. 922.

That case was cited and expressly approved by this Court in *Ozawa* v. *United States,* 260 U. S. 178, 197. It is clear, therefore, that prior to 1918 no alien of any race other than the white or African could become eligible for citizenship by reason of Army service. The purpose of R. S. 2166, as read in the light of R. S. 2169, was merely to provide special facilities for the speedy naturalization of alien soldiers *who were within the eligible classes;* it was not intended to enlarge those classes.

Corresponding provisions for the speedy naturalization of aliens serving in the Navy are also to be found prior to 1918. The Naval Appropriation Act of 1894 (Act of July 26, 1894, c. 165, 28 Stat. 123, 124) dispenses with the necessity for a prior declaration of intention in favor of—

> *any alien* of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five con-

> secutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged. [Italics ours.]

The Naval Appropriation Act of 1914 (Act of June 30, 1914, c. 130, 38 Stat. 392, 395) is more specific. It dispenses with declaration of intention and proof of residence in favor of:

> *any alien,* of the age of twenty-one years and upward, *who may, under existing law, become a citizen of the United States,* who has served or may hereafter serve for one enlistment of not less than four years in the United States Navy or Marine Corps, and who has received therefrom an honorable discharge, or an ordinary discharge, with recommendation for reenlistment, or who has completed four years in the Revenue-Cutter Service and received therefrom an honorable discharge or an ordinary discharge with recommendation for reenlistment, or who has completed four years of honorable service in the naval auxiliary service. [Italics ours.]

These Acts of 1894 and 1914 remained in force until repealed by section 2 of the Act of 1918.

Under both the Act of 1894 and the Act of 1914 it was repeatedly held that the provisions of R. S. 2169 were still controlling on the question of race, that the classes of person eligible to naturalization had not been increased, and that persons of Asiatic

race, including Filipinos, could not attain citizenship through naval service.

In re Knight, 171 Fed. 299.

Bessho v. *United States* (C. C. A.) 178 Fed. 245.

In re Alverto, 198 Fed. 688.

In re Lampitoe, 232 Fed. 382.

In re Rallos, 241 Fed. 686.

III

Prior to 1918, then, the appellant could not have attained citizenship by reason of either military or naval service—and these terms include such auxiliary service as the Coast Guard, which was specially named, together with the Navy and Marine Corps, in the Act of 1914. (*supra,* page 10.)

Has the Act of 1918 wrought any change in the law, so as to render the appellant now eligible, when he was not eligible before?

The Act of 1918 specifically provides (*supra,* page 4) that:

> Nothing in this act shall repeal *or in any way enlarge* section twenty-one hundred and sixty-nine of the Revised Statutes, except as specified in the seventh subdivision of this Act and under the limitation therein defined.

The seventh subdivision, here mentioned, is the one to which reference has already been made, and which is quoted *supra,* page 2.

The appellant contends that the result of this Act is to abolish all racial distinctions in the case of aliens in military or naval service, and thereby to overturn what has been the settled policy of Congress since 1790 with regard to aliens in general, and since 1862 with regard to aliens serving in the forces of the United States.

It is submitted that such a result was not intended by the framers of the Act and can not be supported by its language.

The point now at issue involves the meaning of the words above quoted: *"except as specified in the seventh subdivision of this Act and under the limitation therein defined."* It is the contention of the appellant that these words must be taken to cover all the classes of aliens mentioned in the seventh subdivision, and that with respect to all those classes all racial barriers are abolished.

Such is not the meaning which has been placed upon these words by the lower Federal courts. Those courts have pointed out that the intention of Congress was not to "let down the bars" or to admit to citizenship any classes which were previously ineligible, with a single exception. That exception was in favor of Filipinos. They had previously been held ineligible for citizenship, as being of the brown race.

In re Alverto, 198 Fed. 688.
In re Lampitoe, 232 Fed. 382.
In re Rallos, 241 Fed. 686.

It is true that in some cases decisions had been rendered in favor of naturalizing Filipinos.

In re Bautista, 245 Fed. 765.
In re Mallari, 239 Fed. 416.

But the preponderance of opinion was against their eligibility; or, at least, the question remained open to much doubt. To resolve this doubt in favor of Filipinos who had served in the Navy, Congress inserted the seventh subdivision of the Act (*supra*, p. 2) dealing with such cases. There was a special reason for this. The Filipinos occupy a status somewhat different from ordinary aliens; they already owe allegiance, in some sense, to the United States; and it was this fact which led Congress to grant them a special favor not extended to other Orientals. But except in the case of Filipinos (and possibly Porto Ricans) the racial requirements of R. S. 2169 were to remain unimpaired. Asiatics who had formerly been ineligible were to remain so. The intention of Congress was merely to hasten the processes of naturalization in favor of persons in the service. The Act, in other words, was intended merely to relax the rules of *procedure*. It was not intended (save in the case of Filipinos serving in the Navy) to widen the rules of *eligibility*. The words "*except as specified in the seventh subdivision of this Act and under the limitation therein defined*" must be taken as referring only to the case of Filipinos (and possibly to Porto Ricans also) and not to the other aliens

mentioned in that subdivision; for as to those other aliens the existing racial standards were to continue.

We have, then, to consider the meaning of the language last quoted. What are the specifications referred to in the seventh subdivision, and what is the limitation therein defined? As has been said, the only reference to race contained in that section was as to Filipinos and Porto Ricans. For this reason, it may well have been deemed necessary, or at least expedient, to reaffirm the binding force and effect of section 2169. It has already been shown that Filipinos, in certain cases, have been adjudged inadmissible to citizenship because of racial disqualification. Some citizens of Porto Rico may be conceived to present similar disabilities. Congress, in passing this law, must be presumed to have acted with knowledge of all previous legislation and of its interpretation by the courts. The exceptions referred to must have been the races especially mentioned in the seventh subdivision, and the limitation was the military or naval service performed. In other words, under the general law, neither a Filipino nor a Porto Rican could necessarily have been admitted to citizenship. Under this subdivision he may be, irrespective of race, if he has performed the service specified.

Petition of Easurk Emsen Charr, 273 Fed. 207, 212.

Cf. *In re En Sk Song; In re Mascarenàs,* 271 Fed. 23, 26.

IV

But if any doubt exists as to the construction of the words in question, it is dispelled, and the correctness of the theory expressed in the *Charr* and *Mascarenas* cases (*supra*) is fully sustained, by reference to the committee reports. It is admitted that such reports should not be used to create doubts, but only to dispel them, and that the expressions of individual members of Congress may not be resorted to. Nevertheless, it is submitted that in the present case the committee reports, as well as statements in the nature of supplemental reports made by committee members upon the floor of the House, may properly be consulted to ascertain the true intention of the legislative body.

> *Duplex Printing Co.* v. *Deering,* 254 U. S. 443, 474.

The Naturalization Act of 1918 (act of May 9, 1918, c. 69, 40 Stat. 542) was H. R. 3132, Sixty-fifth Congress, second session.

The report of the Senate committee sheds some light on the points now under consideration (Senate Report No. 388; 65th Congress, 2nd session, Senate Reports, vol. 1).

At page 2 of the report:

> The amendatory matter recommended by this committee in lieu of bill H. R. 3132 will be found commencing with subdivision seventh. Subdivision seventh enlarges the scope of the naturalization laws by extending to those native-born Filipinos who are

not citizens of the United States and who have enlisted or may hereafter enlist in the United States Navy, Marine Corps, and auxiliary vessels of the Navy, the privilege of securing American citizenship after honorable service and discharges showing such service. This provision has been inserted in deference to the desires expressed by the Secretary of the Navy. Subdivision seventh also embraces within it all of the classes of aliens who are exempted from the general provisions of the naturalization laws by reason of their inability to acquire a domicile in any State or Territory of the United States. They are aliens who have enlisted and have been honorably discharged from the military and naval services of the United States Government, from the Philippine Constabulary, and from military service in the Panama Canal Zone. It also includes those aliens who have had military training in the National Guard or Naval Militia of any State, Territory, or District, any alien serving in the military or naval service of the United States, or any alien declarant who has been accepted conditionally in the military or naval service of the United States. * * *

At page 3:

* * * This subdivision also provides for the naturalization of all the American

soldiers of foreign birth now in the military service of the United States. * * *

At page 8:

> * * * Section 2 contains the quoted portions of the sections of the Revised Statutes that are repealed. It also contains the general repealing clause and safeguards the prosecutions of crimes for offenses against the naturalization laws of the United States. *It also declares that nothing in the act shall enlarge or repeal in any way section 2169 of the Revised Statutes except as specified in the seventh subdivision and under the limitation therein defined. This means that Filipinos may be naturalized who are enlisted in the Army or Navy of the United States and are honorably discharged therefrom.* [Italics ours.]

To the same effect is the House Report accompanying H. R. 11518, which was incorporated in H. R. 3132, and forms, with H. R. 3132, the final Act. (For the union of the two measures see Congressional Record, vol. 56, part 6, page 6022. 65th Congress, 2nd session.)

The report just mentionel is House Report No. 502, 65th Congress, 2nd session, House Reports, vol. 1.

At page 1 of the report:

> The seventh subdivision has been prepared for the purpose of unifying the rule of exemptions extended to certain aliens who have received military training in the armies of

> the United States and the Philippine Islands, as well as those serving on vessels of the United States Government and the American merchant marine. *It also makes the first enlargement ever authorized of the provisions of Section 2169 by allowing Filipinos* who have served in the United States Navy or Marine Corps or the Naval Auxiliary Service, and have been honorably discharged therefrom after the term of enlistment specified, to petition for naturalization under the conditions and limitations as defined in the seventh subdivision, and includes all those who are at present in the military service of the United States, whether they have declared their intention or not. [Italics ours.]

At page 4:

> In the general repealing portion of this section the provision as to the effect of this act upon Section 2169 of the Revised Statutes *is clearly shown not to enlarge it in any way except as to the Filipino,* and only in those cases of Filipinos who have performed the service in the Navy as defined in subdivision 7. [Italics ours.]

The purpose of Congress not to enlarge R. S. 2169 is made still more clear by reference to the explanatory statements made on the floor of the House by Mr. Burnett, Mr. Johnson, and Mr. Hayes (House managers in the Conference Committee which sat on the bill when the Senate and House

disagreed), who were in charge of the bill when it was reported back from conference.

Congressional Record, vol. 56, part 6, page 6000, in a debate on subdivision 7 of the Act:

Mr. MOORE of Pennsylvania. How would that apply in the case of a Chinaman or a Japanese? The term "any alien" there is pretty broad. It applies to a Filipino in the service. Is it possible it would apply also to a Chinaman or a Jap?

Mr. BURNETT. This does not repeal the existing law which excludes Chinese and Japanese from citizenship.

The law reads:

"That hereafter no State court or court of the United States shall admit Chinese to citizenship, and all laws in conflict with this act are hereby repealed."

Mr. JOHNSON of Washington. Further, it is to persons who have applied for citizenship. It is not under present laws as to those outside of this country.

Mr. MOORE of Pennsylvania. Would it be possible to obtain a foothold in the Army and make that the medium of becoming a citizen under this section?

Mr. HAYES. Mr. Speaker, I would like to suggest to the gentleman that the purpose of this, of course, is to admit Porto Ricans and Filipinos who are in the Army to apply for commissions in order to have an official position in the various Filipino and Porto Rican

contingents of the Army. That is the primary purpose of it.

Mr. BURNETT. It would not apply to those who are not capable of acquiring citizenship.

* * * * *

Again, at page 6000:

Mr. MOORE of Pennsylvania. Will the gentleman permit me to call his attention to that section beginning on top of page 3 of the original bill, as follows—

"Any alien serving in the military or naval service of the United States during the time this country is engaged in the present war may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States"—

and then recur to the question? I do not want to embarrass the gentleman, but he may have thought it out. I want to know if under that broad provision applying to "any aliens" it may not apply to Japanese and Chinese who may be engaged somewhere in the Navy or the Army? Surely there are some on the ships and at Army posts.

Mr. BURNETT. If the gentleman will refer to page 16, he will find:

"Nothing in this act shall repeal or in any way enlarge section 2169 of the Revised Statutes, except as specified in the seventh subdivision of this act, and under the limitation therein defined."

Now, that section excludes them from naturalization.

Mr. MOORE of Pennsylvania. The gentleman has caught up with the question I am raising.

Mr. BURNETT. That was all discussed in our committee and in the conference committee.

Mr. MOORE of Pennsylvania. The language on page 3 of the original bill is so broad that I thought it proper to ask the question.

Mr. BURNETT. With that limitation I think it is all right.

* * * * *

At page 6001:

Mr. MEEKER. Then, we understand that it is the opinion of the chairman of the committee that this particular thing should be so construed that if a Filipino, or anyone who has been discharged during the Spanish-American War or since, and has lived a year in the United States at any time, is therefore under the law entitled to citizenship?

Mr. BURNETT. Not the Filipino.

Mr. MEEKER. I mean those men who have served under the United States forces?

Mr. BURNETT. Yes; *those who are entitled to naturalization; but an Asiatic could not be.* Any other alien who under the general naturalization laws was entitled to naturalization would be, under this general law, according to the construction that the bureau

has given it and that the Department of Justice has given it. He would be entitled to naturalization. [Italics ours.]

Again at page 6003:

Mr. NORTON. Mr. Speaker, I understood the gentleman from Alabama [Mr. Burnett], in making the explanation to the gentleman from Pennsylvania, to say that in paragraph 10, on page 16, line 21, the reference to section 2169 of the Revised Statutes would exclude the inclusion of Chinese and Japanese in the term "any alien serving in the military or naval service of the United States" as used on page 3, line 20. The gentleman from Pennsylvania called the attention of the gentleman from Alabama to the fact that the expression "any alien serving in the military or naval service of the United States" might include Chinese or Japanese as that term "any alien" is used on page 3, line 20. May I ask the gentleman from Alabama [Mr. Burnett] how is that safeguarded against? As I understood the gentleman from Alabama, he said it was safeguarded by the provision on page 16, beginning at line 18 and extending to line 23, which is as follows:

"That all acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed; but nothing in this act shall repeal or in any way enlarge sec-

tion 2169 of the Revised Statutes, except as specified in the seventh subdivision of this act and under the limitation therein defined."

Mr. BURNETT. Section 2169 is a declaration as to who shall be entitled to naturalization—that is, that white persons and aliens of African nativity and persons of African descent; and, in not repealing that, and specifically stating it does not repeal that, it constitutes a limitation upon the scope of this law so far as the naturalization of Chinese or Japanese is concerned.

Mr. NORTON. The gentleman's interpretation of section 2169 is that it "excludes from the naturalization laws Japanese and Chinese"?

Mr. BURNETT. Yes; that has been the construction of the courts.

Mr. NORTON. Section 2169 reads as follows:

"The provisions of this title shall apply to aliens [being free white persons and to aliens] of African nativity and persons of African descent."

Mr. BURNETT. Yes.

Mr. NORTON. Is the effect of that to exclude those of the brown race?

Mr. BURNETT. Yes.

Mr. NORTON. That is the interpretation that has been placed upon it?

Mr. BURNETT. Yes; that is the interpretation given by the courts. The inclusion

of the one is the exclusion of the other. It is a limitation on those entitled to naturalization.

Mr. MOORE of Pennsylvania. Have the courts so interpreted section 2169?

Mr. BURNETT. Yes.

Mr. MOORE of Pennsylvania. As applying to Asiatics as well as Africans, because it mentions only Africans?

Mr. BURNETT. It only states who may be naturalized, and in stating who may be naturalized, by virtue of that very fact, it excludes those not embraced within its terms, and therefore they can not be naturalized.

Mr. NORTON. The words "being free white persons" are included within brackets and then come the words, "and to aliens of African nativity and persons of African descent." That excludes the brown race?

Mr. BURNETT. That is the interpretation of the courts, and I think it is a very reasonable one.

Mr. NORTON. In reading the section that interpretation of it was not clear to me and that is the reason I made the inquiry.

Mr. BURNETT. Yes; it is an important question, and I am glad the gentleman asked it.

It is therefore clear that Congress, in enacting this legislation, was very far from intending to enlarge the scope of the naturalization laws to take in persons of races hitherto excluded. An exception was made only in the case of the Filipinos. But beyond that Congress did not intend to go.

The repealing clause of the Act expressly provides that the racial restrictions imposed by R. S. 2169 shall continue "except as specified in the seventh subdivision of the Act and under the limitation therein defined." This "limitation," as the committee report clearly shows, applies to the case of the Filipinos only. The words "any alien" in subdivision 7 must bear their historical definition, and must be considered as being limited by R. S. 2169 to aliens of the white and African races only.

V

But the appellant, if defeated under the Act of 1918, seeks to rest his case on the provisions of the Act of July 19, 1919, c. 24 (41 Stat. 163, 222), quoted *supra*, page 5.

The same arguments which have already been directed to the Act of 1918 will also apply to this Act. The words "*any person of foreign birth*" in the Act of 1919 must be considered as equivalent to the words "*any alien*" in the Act of 1918. Both alike must be construed in the light of R. S. 2169. Congress, in 1918, very plainly manifested its intention not to relax the racial tests for citizenship, even in favor of persons in the military or naval service; and it can not be assumed, in the absence of very clear language to the contrary, that the intention of Congress, during one year, underwent a complete change. The purpose of the Act of 1919 is plain; it is merely an extension of the privileges of the Act of 1918 to soldiers and sailors (of eligible races, it must be understood) *after their dis-*

charge, with an added provision that no fees shall be required, and with an extension of its benefits "for the period of one year after all the American troops are returned to the United States."

VI

The purpose of the two Acts is identical; it is merely to provide, for the benefit of alien soldiers and sailors, a more speedy means of approach to citizenship by the relaxation of the ordinary requirements as to declaration of intention, proof of residence, and the payment of fees. Like the Act of June 29, 1906, c. 3592 (34 Stat. 596), which they amended, the purpose of the Acts of 1918 and 1919 is chiefly procedural. *Ozawa* v. *United States*, 260 U. S. 178, 191. In neither Act can there be found any basis for the contention that Congress intended to depart from the traditional policy of this country with regard to the admission of the Oriental races to citizenship. And the lower Federal courts have uniformly treated the Acts of 1918 and 1919 as applicable only to persons of the white and African races and to Filipinos. It is in favor of the latter only that the racial qualifications have been relaxed; and other Orientals, notwithstanding military or naval service, have been held ineligible for citizenship under both the Acts of 1918 and 1919.

In re Para; *In re Narasaki*, 269 Fed. 643.
In re En Sk Song; *In re Mascarenas*, 271 Fed. 23.

Petition of Kasurk Emsen Charr, 273 Fed. 207.

Petition of Dong Chong, 287 Feb. 546.

The case of *Kasurk Emsen Charr* (*supra*) was cited and expressly approved by this court in *Ozawa* v. *United States*, 260 U. S. 178, 197. Charr was a Korean, a subject of the Mikado of Japan; his petition for citizenship was based upon military service, and he relied, in his application, on both the Acts of 1918 and 1919. But the Court held that neither the Naturalization Act of 1906 (Act of June 29, 1906, c. 3592, 34 Stat. 596), nor the later Acts of 1918 and 1919 had in any way repealed or extended the racial tests laid down by R. S. 2169, and that, inasmuch as Charr was neither a free white person nor an African, his petition must be denied. In *Ozawa* v. *United States* (*supra*), after citing *Charr's case* and others, this Court said:

> With the conclusions reached in these several decisions we see no reason to differ. [260 U. S. 178, 197.]

The facts of *Charr's case* are exactly parallel to those of the case at bar; and it is submitted that the decision in *Charr's case* is correct.

VII

It is submitted that the language of the statutes, even when considered by itself, can not reasonably be made to bear the interpretation which the appellant seeks to place upon it. When considered in the light of history, of decided cases, and of the

surrounding circumstances, that language is rendered free from all doubt. The intention of Congress to erect, and to maintain unaltered, certain racial distinctions, is clear and unambiguous, and has undergone no change since 1918. Those racial distinctions are applicable alike to civilians and to persons now or formerly members of the armed forces of the nation.

It is therefore respectfully submitted that both of the questions certified should be answered in the negative.

JAMES M. BECK,
Solicitor General.

WILLIAM J. DONOVAN,
Assistant Attorney General.

MARCH, 1925.

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TOYOTA *v.* UNITED STATES

ON CERTIFICATE FROM CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

No. 231. Argued March 18, 1925.—Decided May 25, 1925.

1. A person of the Japanese race, born in Japan, may not legally be naturalized under the seventh subdivision of § 4 of the Act of June 29, 1906, as amended May 9, 1918, 34 Stat. 601, 40 Stat. 542; nor under the Act of July 19, 1919, 41 Stat. 222. P. 407.

2. The seventh subdivision, *supra*, in permitting "any alien" who has rendered specified military or maritime service and fulfills other prescribed conditions, on presentation of the required declaration of intention, to petition for naturalization without proof of 5 years' residence in the United States; and in permitting "any alien" serving in the forces of the United States during the time the country was engaged in the late war to file his petition without such declaration or such proof of residence, was not intended in those cases to eliminate the distinction made in Rev. Stats. § 2169 based on color or race, but, like earlier acts using the same phrase, refers to aliens who might, consistently with that distinction, become citizens. P. 409.
3. In § 2 of the above Act of 1918, providing that nothing in the Act shall repeal or in any way enlarge Rev. Stats. § 2169 "except as specified in the seventh subdivision of this Act and under the limitation therein defined," the exception does not imply an intention to depart from the race or color distinction of § 2169 as to the aliens mentioned in the seventh subdivision but refers to the provision there made for naturalization of native-born Filipino service men. *Id.*
4. Prior to the Act of 1906, *supra*, citizens of the Philippine Islands were not eligible to naturalization under Rev. Stats. § 2169, because not aliens and therefore not within its terms. P. 410.
5. The Act of 1906, *supra*, § 30 of which extends the naturalization laws, with some modifications, to "persons not citizens who owe permanent allegiance to the United States and who may become residents of any State or organized Territory of the United States," did not disturb the distinction based on race or color, in Rev. Stats. § 2169. P. 411.
6. Prior to the Act of 1918, *supra*, Filipinos not being "free white persons" or "of African nativity" were not eligible to citizenship of the United States; but an effect of that act was to authorize the naturalization of those native-born Filipinos, of whatever race or color, having the qualifications specified in § 4, subdiv. seventh. *Id.*
7. The Act of July 19, 1919, *supra*, provided that "any person of foreign birth" who served in the forces in the late war should under certain conditions, "have the benefits of" the seventh subdivision of § 4 of the Act of June 29, 1906, *supra*, as amended. *Held* that "any person of foreign birth" is not more comprehensive than "an alien" in the latter act. P. 412.

QUESTIONS certified by the Circuit Court of Appeals, arising upon an appeal by Toyota from a decree of the District Court (290 Fed. 971) canceling his certificate of naturalization in a proceeding brought by the Government for that purpose under the Naturalization Act.

Mr. Laurence M. Lombard, for appellant.

The necessary inference from the repealing clause, Act of 1918, § 2, is that in subdivision 7 we shall find some class specified which but for the words "except as specified" would be restricted by Rev. Stats. § 2169. Obviously this must refer to a class of persons who under prior laws were not subject to naturalization. *Brown* v. *Maryland,* 12 Wheat. 419 at page 438.

Looking at subdivision 7, what persons are specified? None of its provisions has any bearing on the question except as they show that every provision of the 7th subdivision has in view the speedy naturalization of those engaged in any public service of the United States having relation to the conduct of the war. The natural meaning of these words is that any Filipino and any alien and any Porto Rican, all having the qualifications set forth, are the persons "specified" in the 7th subdivision.

As both Filipinos and Porto Ricans were already eligible to naturalization and needed nothing to save them from the limitation of Rev. Stats. § 2169, the words "except as specified" must have had reference to "any aliens" as the class as to which that section was repealed or enlarged.

This construction of the Act of May 9, 1918, is the only one which will give effect to all the words. From the language, it is clear that Congress intended to enlarge § 2169 as to certain persons. That section does not set forth the qualifications necessary to obtain naturalization, but states the races to whom the privileges of naturalization are limited. Therefore, any enlargement of it

must extend the privileges of naturalization to some race or races not heretofore eligible—not to all members of the race, released from the limitations of § 2169, but only to those bearing the qualifications required by subdivision 7.

The Government has argued that the addition was solely the inclusion of Filipinos and Porto Ricans. This cannot have been the fact because Filipinos and Porto Ricans could already be naturalized under § 30 of the Act of June 29, 1906, and therefore as to them any addition would be unnecessary and superfluous. *In re Bautista,* 245 Fed. 765; *In re Giralde,* 226 Fed. 826; *In re Mallari,* 239 Fed. 416; *In re Monico Lopez,* Naval Digest 1916, p. 207 (Supreme Court of D. C. 1915); 27 Op. Atty. Gen. 12; Letter of Solicitor Gen. Davis to Secretary of Labor, January 4, 1916, reaffirming opinion of Atty. Gen. Bonaparte.

All other aliens except Asiatics could of course be naturalized under § 2169; so, unless the words "except as specified" refer to "any aliens" as specified in subdivision 7 and these words in turn include in their meaning "Asiatics," the entire exception becomes superfluous. The words "any alien" as used in the naturalization laws are nowhere defined, and retain their natural meaning.

The Act of 1918 repealed part of the Act of June 30, 1914, and part of the Act of June 25, 1910, restating the repealed parts but omitting in the re-enactment of the Act of 1914 significant words used in the former act. Such omission implies an alteration in the purpose. As the language of the Act of May 9, 1918, is clear, congressional debates and committee reports are not admissible to influence the interpretation.

The weight of authority is in favor of the naturalization of the appellant. The records of the Bureau of Naturalization show that at least eighty-seven Asiatics have been naturalized in continental United States under

the Acts in question divided among ten naturalization districts. All but nine of these were naturalized prior to the enactment of the statute of July 19, 1919. In addition two hundred and thirteen Asiatics were naturalized by the United States District Court for the District of Hawaii.

The construction placed upon a statute by an executive department charged with its administration is entitled to great weight. The fact that, after the war was over and the need for further recruits had ceased, the Department altered the interpretation formerly placed on the Act of 1918, is of little value in showing the construction contemporaneously with its passage. Aliens having rendered military service upon promise of citizenship should not later have the citizenship withdrawn.

Appellant is entitled to naturalization under the Act of July 19, 1919.

Mr. Assistant Attorney General Donovan, with whom the *Solicitor General* was on the brief, for appellee.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Hidemitsu Toyota, a person of the Japanese race, born in Japan, entered the United States in 1913. He served substantially all the time between November of that year and May, 1923, in the United States Coast Guard Service. This was a part of the naval force of the United States nearly all of the time the United States was engaged in the recent war. He received eight or more honorable discharges, and some of them were for service during the war. May 14, 1921, he filed his petition for naturalization in the United States district court for the district of Massachusetts. The petition was granted, and a certificate of naturalization was issued to him. This case arises on a petition to cancel the certificate on the ground that

it was illegally procured. § 15, Act of June 29, 1906, c. 3592, 34 Stat. 596, 601. It is agreed that if a person of the Japanese race, born in Japan, may legally be naturalized under the seventh subdivision of § 4 of the Act of June 29, 1906, as amended by the Act of May 9, 1918, c. 69, 40 Stat. 542, or under the Act of July 19, 1919, c. 24, 41 Stat. 222, Toyota is legally naturalized. The district court held he was not entitled to be naturalized, and entered a decree canceling his certificate of citizenship. 290 Fed. 971. An appeal was taken to the Circuit Court of Appeals, and that court under § 239, Judicial Code, certified to this court the following questions: (1) Whether a person of the Japanese race, born in Japan, may legally be naturalized under the seventh subdivision of § 4 of the Act of June 29, 1906, as amended by the Act of May 9, 1918, and (2) whether such subject may legally be naturalized under the Act of July 19, 1919. The material provisions of these enactments are printed in the margin.*

* "Seventh. Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for reenlistment; or any alien, or any Porto Rican not a citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States, . . . or in the United States Navy or Marine Corps, or in the United States Coast Guard, or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom, or while on furlough to the Army Reserve or Regular Army Reserve after honorable service, may, on presentation of the required declaration of intention petition for naturaliza-

Until 1870, only aliens being free white persons were eligible to citizenship. In that year, aliens of African nativity and persons of African descent were made eligible. See *Ozawa* v. *United States,* 260 U. S. 178, 192. The substance of prior legislation is expressed in § 2169, Revised Statutes, which is: " The provisions of this Title [Naturalization] shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent." A person of the Japanese race, born in Japan, is not eligible under that section. *Ozawa* v. *United States, supra,* 198.

It has long been the rule that in order to be admitted to citizenship, an alien is required, at least two years prior to his admission, to declare his intention to become a citizen, and to show that he has resided continuously in the United States for at least five years immediately preceding his admission. Revised Statues, §§ 2165, 2170;

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tion without proof of the required five years' residence within the United States if upon examination . . . it is shown that such residence cannot be established; any alien serving in the military or naval service of the United States during the time this country is engaged in the present war may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States; . . . § 2 . . . Nothing in this Act shall repeal or in any way enlarge section twenty-one hundred and sixty-nine of the Revised Statutes, except as specified in the seventh subdivision of this Act and under the limitation therein defined: . . ." (Act of May 9, 1918, c. 69, 40 Stat. 542, 547.)

"Any person of foreign birth who served in the military or naval forces of the United States during the present war, after final examination and acceptance by the said military or naval authorities, and shall have been honorably discharged after such acceptance and service, shall have the benefits of the seventh subdivision of section 4 of the Act of June 29, 1906 . . . as amended, and shall not be required to pay any fee therefor; and this provision shall continue for the period of one year after all of the American troops are returned to the United States." (Act of July 19, 1919, c. 24, 41 Stat. 222.)

subd. 1, § 4, c. 3592, 34 Stat. 596. But at different times, as to specially designated aliens serving in the armed forces of the United States, Congress modified and lessened these requirements. § 2166, Revised Statutes (Act of July 17, 1862, § 21, c. 200, 12 Stat. 594, 597); Act of July 26, 1894, c. 165, 28 Stat. 123, 124; Act of June 30, 1914, c. 130, 38 Stat. 392, 395. In each of the first two of these acts, the phrase "any alien" is used as a part of the description of the person for whose benefit the act was passed. In the last, the language is "any alien . . . who may, under existing law, become a citizen of the United States." Prior to this act, it had been held that the phrase "any alien," used in the earlier acts, did not enlarge the classes defined in § 2169, *In re Buntaro Kumagai,* (1908) 163 Fed. 922; *In re Knight,* (1909) 171 Fed. 299; *Bessho* v. *United States,* (1910) 178 Fed. 245; *In re Alverto,* (1912) 198 Fed. 688. The language used in the Act of 1914 merely expresses what was implied in the earlier provisions.

The seventh subdivision of § 4, of the act of 1918, permits "any native-born Filipino" or "any alien, or any Porto Rican not a citizen of the United States" belonging respectively to the classes there described, on presentation of the required declaration of intention, to petition for naturalization without proof of five years' residence within the United States; and the act permits "any alien" serving in the forces of the United States "during the time this country is engaged in the present war" to file his petition for naturalization without making the preliminary declaration of intention and without proof of five years' residence in the United States. The act of 1919 gave "any person of foreign birth" there mentioned, the benefits of the seventh subdivision of § 4. Evidently, a principal purpose of these acts was to facilitate the naturalization of service men of the classes specified. There is nothing to show an intention to eliminate from the

definition of eligibility in § 2169 the distinction based on color or race. Nor is there anything to indicate that, if the seventh subdivision stood alone, the words "any alien" should be taken to mean more than did the same words when used in the acts of 1862 and 1894. But § 2 of the act of 1918 provides that nothing in the act shall repeal or in any way enlarge § 2169 "except as specified in the seventh subdivision of this Act and under the limitation therein defined." This implies some enlargement of § 2169 in respect of color and race; but it also indicates a purpose not to eliminate all distinction based on color and race so long continued in the naturalization laws. If it was intended to make such change and to extend the privilege of naturalization to all races, the provision of § 2 so limiting the enlargement of § 2169 would be inappropriate. And if the phrase "any alien" in the seventh subdivision is read literally, the qualifying words "being free white persons" and "of African nativity" in § 2169 are without significance. See *In re Para*, 269 Fed. 643, 646; *Petition of Charr*, 273 Fed. 207, 213.

When the act of 1918 was passed, it was doubtful whether § 30 of the act of 1906 extended the privilege of naturalization to all citizens of the Philippine Islands. They were held eligible for naturalization in *In re Bautista*, 245 Fed. 765, and in *In re Mallari*, 239 Fed. 416. And see 27 Op. Atty. Gen. 12. They were held not eligible in *In re Alverto*, 198 Fed. 688, in *In re Lampitoe*, 232 Fed. 382, and in *In re Rallos*, 241 Fed. 686. But we hold that until the passage of that act, Filipinos not being "free white persons" or "of African nativity" were not eligible, and that the effect of the act of 1918 was to make eligible, and to authorize the naturalization of, native-born Filipinos of whatever color or race having the qualifications specified in the seventh subdivision of § 4.

Under the treaty of peace between the United States and Spain, December 10, 1898, 30 Stat. 1754, Congress

was authorized to determine the civil rights and political status of the native inhabitants of the Philippine Islands. And by the act of July 1, 1902, § 4, c. 1369, 32 Stat. 691, 692, it was declared that all inhabitants continuing to reside therein who were Spanish subjects on April 11, 1899, and then resided in the Islands, and their children born subsequent thereto, " shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain," according to the treaty. The citizens of the Philippine Islands are not aliens. See *Gonzales* v. *Williams,* 192 U. S. 1, 13. They owe no allegiance to any foreign government. They were not eligible for naturalization under § 2169 because not aliens and so not within its terms. By § 30 of the Act of 1906, it is provided: " That all the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any State or organized Territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law." (34 Stat. 606.)

Section 26 of that act repeals certain sections of Title XXX of the Revised Statutes, but leaves § 2169 in force. It is to be applied as if it were included in the act of 1906. Plainly, the element of alienage included in § 2169 did not apply to the class made eligible by § 30 of the act of 1906. The element of color and race included in that section

is not specifically dealt with by § 30, and, as it has long been the national policy to maintain the distinction of color and race, radical change is not lightly to be deemed to have been intended. "Persons not citizens who owe permanent allegiance to the United States, and who may become residents of any State" may include Malays, Japanese and Chinese and others not eligible under the distinction as to color and race. As under § 30 all the applicable provisions of the naturalization laws apply, the limitations based on color and race remain; and the class made eligible by § 30 must be limited to those of the color and race included by § 2169. As Filipinos are not aliens and owe allegiance to the United States, there are strong reasons for relaxing as to them the restrictions which do not exist in favor of aliens who are barred because of their color and race. And in view of the policy of Congress to limit the naturalization of aliens to white persons and to those of African nativity or descent the implied enlargement of § 2169 should be taken at the minimum. The legislative history of the act indicates that the intention of Congress was not to enlarge § 2169, except in respect of Filipinos qualified by the specified service. Senate Report No. 388, pp. 2, 3, 8. House Report No. 502, pp. 1, 4, Sixty-fifth Congress, Second Session. See also Congressional Record, vol. 56, part 6, pp. 6000–6003. And we hold that the words "any alien" in the seventh subdivision are limited by § 2169 to aliens of the color and race there specified. We also hold that the phrase "any person of foreign birth" in the act of 1919 is not more comprehensive than the words "any alien" in the act of 1918. It follows that the questions certified must be answered in the negative.

The answer to the first question is: *No.*

The answer to the second question is: *No.*

The CHIEF JUSTICE dissents.